

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 UNITED STATES OF AMERICA,)
)
4 Plaintiff,)
) No. CR-09-00088-FVS
5 Versus) March 2, 2012
) Spokane, Washington
6 KARL F. THOMPSON, JR.,)
) Pages 1 - 175
7 Defendant.

8 DEPOSITION OF GRANT FREDERICKS
9

10 BE IT REMEMBERED that on the 2nd of March, 2012, at
11 the hour of 12:18 p.m., the video taped deposition of GRANT
12 FREDERICKS was taken at the request of the Defendant, before
13 Mark A. Snover a notary public and court reporter, CSR No.
14 SN-OV-EM-A396DM at 920 W. Riverside Avenue, Spokane, Washington,
15 pursuant to Federal Rules of Criminal Procedure.

1 **APPEARANCES:**

2
3 **For the Plaintiff:** U. S. ATTORNEY'S OFFICE
4 BY: Tim Durkin
5 Attorney at Law
6 P. O. Box 1494
7 Spokane, WA 99210

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9 **For the Defendant:** ETTER, MCMAHON LAW FIRM
10 BY: Carl J. Oreskovich
11 Courtney Garcia
12 Attorneys at Law
13 618 W. Riverside Avenue
14 Spokane, WA 99201

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16 **For the Witness:** PHILLIP J. WETZEL, P.S.
17 BY: Phillip J. Wetzel
18 Attorney at Law
19 901 N. Adams Street
20 Spokane, WA 99201

21
22 **ALSO PRESENT:** Karl F. Thompson, Jr.
23 Lisa Jangaard

24
25 **COURT REPORTER:** Mark A. Snover, RPR, CSR
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Proceedings recorded by mechanical stenography, transcript
produced by computer.

I N D E XPAGEDEFENDANT'S WITNESS:

GRANT FREDERICKS

Examination by Mr. Oreskovich

6

Examination by Mr. Durkin

75

Further Examination by Mr. Oreskovich

169

E X H I B I T S

NUMBER:Marked

1	(Statement of Fredericks)	5
2	(Rule 16 Disclosure)	5
3	(Report of Fredericks)	5
4	(Supplemental Report of Fredericks)	5
5	(FBI 302)	5
6	(Grand Jury Testimony of Fredericks)	5
7	(DVD)	5

(Deposition started at 12:18 p.m.)

(Exhibits number 1 through 7 marked.)

THE VIDEOGRAPHER: My name is Bonnie Hamada, NCRA Certified Legal Video Specialist. I am the videographer in the pending matter.

It is Friday March 2, 2012. The time is now 12:18 p.m. We are at the Thomas Foley United States Courthouse, 920 West Riverside Avenue, Courtroom 902, Spokane, Washington.

We are here to take the deposition, both stenographically and by videotape, of Grant Fredericks, filed in the U.S. District Court, Eastern District of Washington, number CR-09-88-FVS, entitled USA versus Karl Thompson, Junior.

Notice of this videotaped deposition was given by the law office of Etter McMahon Lamberson Clary & Oreskovich.

In attendance today and present on behalf of the plaintiff is Timothy Michael Durkin.

Present on behalf of the defendant is Carl J. Oreskovich and Courtney A. Garcia.

Present on behalf of the witness is Phillip J. Wetzel.

Also in attendance is Karl Thompson and Lisa Jangaard.

Present to make the official record of the proceeding is the Certified Court Reporter, Mark Snover, who will now swear the witness.

1 WHEREUPON,

2 GRANT FREDERICKS

3 having been first duly sworn

4 testified as follows:

7 EXAMINATION

8
9 BY MR. ORESKOVICH:

10 Q. Mr. Fredericks, would you state your name and business
11 address, for the record, please.

12 A. My name is Grant Fredericks. Address 105 West Rolland
13 Avenue in Spokane. 99218.

14 Q. Do you operate a business?

15 A. Yes.

16 Q. What is the name of the business?

17 A. Forensic Video Solutions.

18 Q. What does Forensic Video Solutions do?

19 A. The company is involved in the analysis, examination and
20 reporting of video evidence for criminal cases, for the
21 prosecution and for defense; for civil cases; and we also do
22 instruction in forensic video analysis and consulting in that
23 arena.

24 Q. Sir, how long have you been in the business that you just
25 described?

1 A. I've been processing video for legal purposes for law
2 enforcement since 1984.

3 Q. And tell me, do you work as an instructor anywhere?

4 A. Yes.

5 Q. Tell me, please, where you work as an instructor.

6 A. I'm an instructor for the Law Enforcement and Emergency
7 Services Video Association, an organization called LEVA. L E V
8 A.

9 And we operate the National Digital Multimedia
10 Evidence Processing Lab at the University of Indianapolis. I
11 teach about five to six courses a year in the lab.

12 I teach for police agencies around the country,
13 including police agencies in Canada and in the United Kingdom.

14 And I'm contract instructor at the FBI National
15 Academy.

16 And that involves the, all the training programs that
17 we offer.

18 Q. The FBI National Academy, is that in Quantico, Virginia?

19 A. Yes.

12:21PM 20 Q. And how long have you been an instructor there, please?

21 A. I've been teaching for the National Academy for about 10
22 years.

23 Q. What do you teach there in general terms?

24 A. The National Academy hosts an 11 week session for police
25 administrators from around the world through, partly sponsored

1 through the Department of Justice and through the State
2 Department.

3 The majority of the students come from the
4 United States and they are senior executives from police
5 agencies. They're there to learn about standardized law
6 enforcement practices and I am involved in the forensic area of
7 that program.

8 So I do sort of state of the art updated training for
9 those sections. And I teach twice at each section.

12:22PM 10 Q. And then you also testified that you teach at the
11 University of?

12 A. Indianapolis.

13 Q. Of Indianapolis. And what do you teach there?

14 A. Forensic video analysis. There are four, one-week courses
15 that we teach about five to seven times a year really, it kind
16 of varies. Each one is a 40-hour course and the first course is
17 a Level I introduction course.

18 Q. Um-hum.

19 A. The second course is a digital photographic or digital
12:23PM 20 multimedia evidence processing course that focuses on digital
21 video recording evidence.

22 Q. Um-hum.

23 A. And the third course is an advanced course.

24 The fourth course that I teach is a photographic video
25 comparison course.

1 And all of them are focused toward the process of
2 certification for the students. And certification takes
3 anywhere from three to six or seven years to complete.

4 Q. What is forensic video analysis?

5 A. Forensic video analysis is the science of examination,
6 comparison and evaluation of video in legal matters. And that's
7 the definition that is broadly used to describe the acquisition
8 of digital video, the interpretation of video, both digital and
9 analog, and the examination of artifacts of compression and the
12:24PM 10 interpretation of the meaning of video.

11 And then putting together a report for trial and
12 testifying, offering an opinion as to what the video means, to
13 assist a trier of fact usually.

14 Q. And have you testified as an expert witness in terms of
15 forensic video analysis?

16 A. Yes.

17 Q. Just roughly, if you can, please, tell me about how many
18 times you've testified as an expert in that area.

19 A. Over a hundred times.

12:24PM 20 Q. I'm going to ask you some detailed questions as we move
21 along here, but in a summary form, if you could, please, tell me
22 how it was that you first became involved in this case.

23 A. I made a presentation to the Washington Prosecutors
24 Association in Lake Chelan. I believe in 2004 or 2005.

25 And the county prosecutor, Mr. Driscoll, was there.

1 He contacted me some time after this incident and told me that
2 he had been to a presentation and that there's video and would I
3 be available to examine the video.

4 Q. Mr. Driscoll, is he with the Spokane County Prosecutor's
5 Office?

6 A. At the time I wasn't sure whether it was the Prosecutor's
7 Office or the City Prosecutor. I don't do work here in Spokane
8 very much, so I wasn't sure, but probably the Prosecutor's
9 Office.

12:26PM 10 Q. All right.

11 A. Or the County Prosecutor.

12 Q. Did you then perform an analysis of the Zip Trip video and
13 other items in connection with the Otto Zehm incident?

14 A. I did.

15 Q. All right. And then did you prepare a report of that
16 analysis?

17 A. Yes.

18 Q. And I have numerous documents in front of you. If you
19 would look at exhibit 3, on your right side there, I hope that I
12:26PM 20 have copied the report in its entirety.

21 Would you look at that and just tell me if that's a
22 copy of your original report, please.

23 A. Yes, it appears to be.

24 Q. All right, sir. And just so that we're clear in this
25 regard, in terms of how you were paid, you charge a service for

1 this analysis, do you not?

2 A. Yes.

3 Q. All right. And in this particular case, for the original
4 report, the original work that you had done, who were you paid
5 by, if you know.

6 A. I believe it was the City of Spokane.

7 Q. Yeah.

8 A. I don't know what entity.

9 Q. All right.

12:27PM 10 There is an attorney with the City of Spokane by the
11 name of Rocco Trepeddi or Rocky Trepeddi?

12 A. Yes.

13 Q. Did you have some contact with Mr. Trepeddi?

14 A. Yes.

15 Q. At some point?

16 A. Yes.

17 Q. Was that for the purpose of getting paid for the work that
18 you had done or do you know?

19 A. I think I was bounced around a little bit.

12:27PM 20 Q. Yeah.

21 A. Initially the prosecutor was interested in seeing if I was
22 available for the work.

23 Q. Right.

24 A. Asked me roughly what it would cost.

25 Q. Um-hum.

1 A. And I've done cases like this in the past and I can give
2 them, I gave him a rough idea of the kind of costs involved,
3 based on the number of exhibits I would be asked to look at.

4 He didn't hire me right away, he said he'll get back
5 to me. When he got back to me he said that the, this is still a
6 police investigation, so the city police are going to pay you.
7 But they would like to engage you and they would like to set up
8 a meeting.

9 Q. Um-hum.

12:28PM 10 A. So at that point the, somebody from the city police was
11 going to accept responsibility for paying me.

12 Eventually it went to somebody else in the city
13 government and I think back to the police and then back to
14 somebody else at city government. So eventually I don't know
15 where the check came from, but --

16 Q. Um-hum.

17 A. -- but Mr. Trepeddi at one point was my point of contact
18 for pay.

19 Q. Um-hum.

12:29PM 20 A. And because of that he was my only contact I had after I
21 submitted my report. And so six months later when I had to
22 contact somebody in the investigation again, I contacted him.

23 Q. All right.

24 My question to you with respect to exhibit 3, which is
25 your original report, did you ever have any discussions with

1 Mr. Trepeddi concerning the contents of your original report?

2 A. No.

3 Q. At some point in time, sir, did you have some communication
4 with anyone from the Department of Justice, specifically from
5 the local FBI office?

6 A. Yes.

7 Q. Can you tell me what those circumstances were that led to
8 that contact?

9 A. Approximately six months after I had filed the report I
10 received a phone message in my office from Special Agent Lisa
11 Jangaard. Requesting a meeting to discuss my report.

12 Q. Um-hum.

13 A. So before answering her call, I contacted Mr. Trepeddi,
14 because he was my only point of contact at that point, and
15 advised that I had been requested to meet.

16 I believe it was Mr. Trepeddi who said, you know, go
17 ahead and meet and take your files. I asked if he wanted to be
18 present and I wanted to know what dates he would be available
19 and he said he didn't need to be present, that I could just go
20 on my own. And he agreed that he would cover the costs of my
21 time.

22 Q. Um-hum.

23 A. So I contacted Special Agent Jangaard and set up an
24 appointment.

25 Q. And do you recall when it was approximately that that

1 appointment occurred?

2 A. Around the end of the first week of March.

3 Q. Of?

4 A. 7th or 8th, 2007.

5 Q. Um-hum.

6 And when you met with Miss Jangaard, where did you
7 meet her at, sir?

8 A. In the Federal Court Building.

9 Q. And that's where we're at today, right?

12:31PM 10 A. Correct.

11 Q. Did you meet at the United States Attorney's Office on the
12 third floor?

13 A. Yes.

14 Q. And did you go into a conference room in the U.S.
15 Attorney's Office on the third floor?

16 A. Yes.

17 Q. While you were at the U.S. Attorney's Office on the first
18 week of March, did you tell me that was roughly March 8th of
19 2007?

12:31PM 20 A. Yes.

21 Q. Did you meet Mr. Durkin?

22 A. Yes.

23 Q. All right. Did you have discussions with Miss Jangaard and
24 Mr. Durkin about the contents of your original report?

25 A. Yes.

1 Q. Tell us, if you would, generally, what the discussions
2 were.

3 A. After the initial interview about background --

4 Q. Um-hum.

5 A. -- experience, we began to discuss the images and Mr.
6 Durkin asserted quite directly that, that I was wrong, that I
7 had missed a lot of information, and he pointed out to me his
8 interpretation of the video where Officer Thompson is seen
9 moving from the north to the south side of the west area of the
10 Zip Trip. Past the west door.

11 Q. Um-hum.

12 A. And directed me to a number of areas saying, here, this is
13 him holding the baton over his head and here's where he turns
14 the corner and hits Zehm in the head with the baton.

15 And that wasn't my interpretation of the video and I
16 told Mr. Durkin that he has misinterpreted the video -- first of
17 all I said I don't see what you see and when he pointed out the
18 areas where he sees the baton, he had misinterpreted the baton
19 for actual artifacts, compression artifacts in the video. These
20 are errors in the video that are very common to digital video.

21 Q. Um-hum.

22 A. And I attempted to educate him about compression artifacts
23 and that he had misinterpreted those objects as a baton, which
24 they weren't, they were the compression.

25 We also discussed where he said, here's where Officer

1 Thompson hits Mr. Zehm with the baton in the head. I was
2 confused by that, because I didn't see that.

3 When we talked about it further it was evident to me
4 that clearly did not happen, in the video, and that our
5 discussion centered around the limitations of video.

6 My, I tried to explain to him that there's only about
7 three and a half to four images per second. And we can't say
8 what happens between the refreshes of the images.

9 I didn't say that Officer Thompson did not swing the
10 baton, the video just does not support that. And that his
11 assertions are not supportable by the video. And that's why
12 they were not contained in my report.

13 Q. So it was your opinion that what Mr. Durkin was telling you
14 is places where there were baton strikes were not supported by
15 the video evidence that you had analyzed; is that correct?

16 A. Yeah, that's correct.

17 Q. How long of a discussion did you have -- was Miss Durkin,
18 or, I'm sorry, not Miss Durkin, Miss Jangaard present during
19 this original meeting on March the 8th of 2007?

12:34PM 20 A. Yes.

21 Q. Roughly, if you can, or if you have a record of it, how
22 long did the meeting last?

23 A. I have a record in my invoices.

24 Q. Yes.

25 A. My recollection is it was at least an hour, maybe more.

1 Q. Um-hum.

2 A. The particular discussion was quite extensive. Regarding
3 the initial entry, rounding the corner, to the area where Mr.
4 Durkin was quite insistent that that was a baton strike or baton
5 strikes.

6 Q. Um-hum.

7 A. At one point, in addition to trying to explain what
8 compression is and the misinterpretation of the images, to the
9 limitations of refresh on the video, that a single image of a
10 baton without motion blur simply means that the baton is there
11 in the image and cannot suggest movement.

12 Q. Um-hum.

13 A. I recall demonstrating what motion blur was by going to an
14 image much further on, where there is clear motion blur by a
15 baton movement from the camera two position when Officer
16 Thompson is directly below the camera. We can see the motion
17 blur.

18 At one point when I tried to explain that we can't say
19 that the baton is in motion, was not in a swinging motion, I
20 gave examples. And I actually asked Mr. Durkin to stand up and
21 I stood up and, to do a re-enactment of how a baton would be
22 held by a police officer.

23 And in watching numerous videos of police using
24 batons, having been a police officer myself and using a baton,
25 and being trained to use a baton, there's a position called a

1 ready or a strike position where one holds a baton in the strike
2 position over a shoulder, giving directions to an individual.
3 It doesn't, I'm not swinging the baton when I'm doing that, I'm
4 saying get on the ground, if that's the direction.

5 Q. Um-hum.

6 A. The video would record the same thing. So in other words,
7 the video in these two areas, I believe it was 18:26, 14 to 16
8 in that area where we see two images of a baton, one in a
9 parallel position over the head, that video would be consistent
10 with somebody holding the baton in a ready position and moving
11 forward, but not swinging it.

12 Q. Um-hum.

13 A. It could also be consistent with the swinging motion where
14 the baton is being pulled back and it just happens to refresh
15 before the baton goes forward again. So it could be a swing,
16 but it's not proof of a swing.

17 Because there's no motion blur in it, there's no
18 suggestion that there is motion in a swinging motion by a baton.

19 Q. Um-hum.

12:38PM 20 A. In our discussion I agreed that clearly the baton is in
21 motion because it's in the officer's hand and he is in motion,
22 but it doesn't mean a swinging motion.

23 So we had a lot of discussion about the interpretation
24 of motion blur. And I provided Mr. Durkin with the name of a
25 doctor, Doctor John Russ, who is a photogrammetry expert.

1 Who could, I thought possibly, be able to look at
2 images of objects in motion and determine the speed of the
3 motion. But I couldn't do that.

4 Q. Um-hum.

5 A. But in these particular cases, the video that we're looking
6 at, there's no evidence of a blur, so he couldn't assist in that
7 particular case.

8 So to answer your question, it was a fairly lengthy
9 exercise of educating them about compression, motion blur,
12:39PM 10 artifacts, and the limitations of the video.

11 MR. DURKIN: Okay, I'm just going to move to strike
12 that testimony as an unnecessary narrative. It's beyond the
13 scope of what the original question asked for. Go ahead.

14 BY MR. ORESKOVICH:

15 Q. We'll get into this in some detail, but let me just ask you
16 just for a moment just to respond succinctly to my questions and
17 we can object or we can avoid some of the objections that will
18 be made, okay?

19 A. Yes, sir.

12:39PM 20 Q. What I was really interested in finding out and you have
21 prepared an exhibit as I understand it of, illustrating various
22 aspects of discussions that you had with Mr. Durkin and Miss
23 Jangaard at various points. Isn't that fair to say?

24 A. Yes.

25 Q. All right. And you've also prepared a statement, have you

1 not, that is I think Exhibit Number 1 in front of you there,
2 that is a statement that -- is that a statement that was
3 prepared or signed by you?

4 A. Yes.

5 Q. All right. And does this statement concern any of the
6 discussions that you had with Mr. Durkin and/or Miss Jangaard
7 concerning whether or not there were initial baton strikes at
8 the time stamp 18:26:14?

9 A. Yes.

12:40PM 10 Q. And later at 18:26:15?

11 A. Yes.

12 Q. You have -- why did you prepare Exhibit Number 1?

13 A. Exhibit Number 1 relates to a Rule 16 disclosure.

14 Q. Um-hum.

15 A. It makes statements about what my opinion was.

16 Q. All right. Let me stop you for a moment, because in front
17 of you is a Rule 16 disclosure. I think it's marked as Exhibit
18 Number 2.

19 A. Yes.

12:41PM 20 Q. And is that the Rule 16 disclosure that you're referring
21 to?

22 A. Yes.

23 Q. All right. So tell us, why does it, sir, that you did
24 statement number or Exhibit Number 1, your statement?

25 A. Rule 16 sets out what my opinion is.

1 Q. Um-hum.

2 A. It's not what my opinion is, it was never my opinion, I
3 rejected almost all of the elements of the Rule 16 in our
4 discussions, um, and so, um, I wanted to insure -- I was
5 concerned that this document was being used in a manner that
6 would bring the administration of justice into disrepute if it
7 were not corrected.

8 And I was concerned that somebody, that this was being
9 used by the Court in a way that was not factual. And I thought
10 it was my responsibility to insure that the record was set
11 correctly.

12 Q. All right.

13 The Rule 16 document, was that a document that was
14 prepared by the U.S. Attorney's Office?

15 A. Yes.

16 Q. Actually signed I think by Mr. Durkin; is that correct?

17 A. Yes.

18 Q. And when you say, "used by the Court," were you concerned
19 that someone would rely upon what was contained in the Rule 16
20 document prepared by Mr. Durkin?

21 A. That was my concern.

22 Q. And were you concerned, sir, that the Rule 16 document
23 misrepresented what your opinions were?

24 A. Well, not only misrepresented my opinions, but I fought
25 very hard against what is credited to me and I did not accept

1 it, I rejected it, and yet it was purported to be my opinion.

2 So it wasn't just a misrepresentation, it was, um, it
3 was a manufacture. And that was what my concern was.

4 Q. Okay. When you say you fought hard against it, would it be
5 fair to say that you had a number of different conversations
6 with Mr. Durkin and Miss Jangaard, where she was involved, where
7 you rendered opinions that were contrary, that was ultimately
8 set forth in the Rule 16 disclosure?

9 MR. DURKIN: I'm going to object to the form of the
10 question. Go ahead.

11 THE WITNESS: That is correct.

12 BY MR. ORESKOVICH:

13 Q. You have prepared an exhibit and it's Exhibit Number 7. I
14 don't know if that's in front of you at the moment, but there's
15 a DVD. That's an exhibit that you prepared; is that correct,
16 sir?

17 A. Yes.

18 Q. And an exhibit that you prepared at your own initiative.
19 In other words, I didn't ask you for that, correct?

12:43PM 20 A. Correct.

21 Q. All right.

22 Indicating or illustrating various points in the Zip
23 Trip video where you had discussions with Mr. Durkin and Miss
24 Jangaard --

25 A. Yes.

1 Q. -- correct? And where your opinions are different than
2 what's set forth in the Rule 16 disclosure, correct, sir?

3 A. That's correct.

4 Q. All right.

5 I'm not necessarily going to go through all of it, but
6 what I want to do is to direct your attention to various
7 portions of it, if we might, sir. Okay?

8 A. Yes, sir.

9 Q. You had made some reference to discussions, first of all,
10 about a comment about artifacts, okay. And is there a portion
11 in the DVD that you discussed with Mr. Durkin and with Miss
12 Jangaard -- let's strike that question. I'm going try this a
13 different way, okay.

14 If I understood your testimony, what you stated was,
15 in this initial meeting with Mr. Durkin and Miss Jangaard, Mr.
16 Durkin showed you the video and in various places suggested to
17 you there were either the baton in motion or baton strikes by
18 Officer Thompson, correct?

19 A. Correct.

12:45PM 20 Q. All right. And if I understand what you told us, what you
21 said is that at least some of the areas were actual artifacts,
22 correct?

23 A. Yes.

24 Q. And other areas where Mr. Durkin suggested there were baton
25 strikes, in your opinion the video evidence did not support that

1 conclusion, correct, sir?

2 A. Correct.

3 Q. All right. If you can rely upon exhibit 7, so we can get
4 as part of the record, first of all, those areas that you
5 discussed with Mr. Durkin and Miss Jangaard, that were actual
6 artifacts, please.

7 A. (Video played.)

8 In exhibit 7 there are a number of slides. Slides are
9 identified in the bottom left hand corner for the record.

12:46PM 10 Q. Um-hum.

11 A. And I'm at slide 57.

12 Q. All right.

13 A. The time is 18:26:11 on the time stamp on camera one.

14 I'll move -- and Officer Thompson is at the west end
15 of the north aisle, moving southbound.

16 Q. Um-hum.

17 A. Move forward to slide 59. I've identified a dark area in
18 front of Officer Thompson's face that Mr. Durkin identified as a
19 baton.

12:46PM 20 I'll move forward a number of slides to slide 64. The
21 time is 18:26:13. Where Mr. Durkin suggested that that's the
22 baton. And I've isolated it with a red circle and an arrow.

23 Q. Um-hum.

24 A. Go forward to slide 67. 18:26:14. It's a dark area in
25 front of Officer Thompson that Mr. Durkin asserted was a baton.

1 Move forward one more image to 18:26:15. To another
2 dark area that Mr. Durkin asserted was a baton.

3 I explained that each of these dark areas were
4 artifacts, they're not batons. Artifacts are very, very common
5 features of compressed digital video.

6 This is, um, simply the edge of a block of pixels and
7 the blocks run from top to bottom, and from left to right, but
8 there's a line of blocks. And where there's a light area and a
9 dark area of contrast, compression all, frequently produces
12:48PM 10 these kinds of artifacts.

11 Q. Um-hum.

12 A. So as an example, I provided, I went in different areas of
13 the video to show similar features to, that are also artifacts,
14 that also look like the same artifacts that I pointed to.

15 So going forward a number of slides, an individual
16 enters before the incident at 18:25:02. And there's a lot of
17 compression, so it's difficult to get very much detail. This is
18 slide 73.

19 As I move forward to slide 77, the background, which
12:48PM 20 is the dark window, intersects at the edge of a block where the
21 person light face is, so there's an area of contrast. And I've
22 highlighted that area as an artifact.

23 Q. Um-hum.

24 A. That is similar to the images with Officer Zehm (sic).

25 As I move forward a number of slides, to slide 82, um,

1 when the person is then silhouetted by the back window again
2 there's a contrast between the two, that artifact appears. The
3 next image the same artifact appears. And then further on at
4 18:25:07, when another individual is walking toward the window,
5 there's an artifact that is very similar and in the exact
6 location as the artifact at 18:26:15 that Mr. Durkin was,
7 asserted was the baton over Officer Thompson's right shoulder.

8 Q. Now what you, you have an exhibit, in exhibit 7 you have
9 both slides, captures of slides and then you have information
10 from the Rule 16 disclosure that you've taken out of it,
11 correct?

12 A. Correct.

13 Q. And we have got lines with red circles. If we play this
14 back for the Court, will it play the same way?

15 A. Exactly the same.

16 Q. Thank you. All right.

17 And I, just so that I'm clear in this regard, did you
18 go through with Miss, with Mr. Durkin and Miss Jangaard at that
19 first meeting when you were demonstrating artifacts and
20 demonstrating other portions of the video where artifacts, did
21 you go through these slides that you're showing us here?

22 A. I went through -- I don't know if I went through the slide
23 of the individual entering --

24 Q. Yeah.

25 A. -- before that. There were other areas where that artifact

1 was manifest. So somewhere in there I showed examples of the
2 same artifacts.

3 When the other officers were moving around after the
4 incident, these artifacts show up all the time.

5 So whenever anybody walks past that back window and
6 there's a contrast between either a light piece of clothing or a
7 light face, these artifacts are manifested.

8 Q. All right. I'm going to ask you to back up in your exhibit
9 7, because there was one, I think it's 18:26:14 where there was
10 an artifact and what has sometimes been described as a hand in
11 the air. There you go. (Indicating).

12 So if we were to look at the computer screen it would
13 be at number 68 in the lower left hand corner?

14 A. Yes.

15 Q. All right.

16 A. And I have just, this is page 68, the top inset image I
17 have the time 18:26:15, it's actually 18:26:14.

18 Q. All right.

19 A. So I can correct that or we can just correct it for the
20 record. The bottom of that image has the correct time stamp
21 18:26:14.

22 Q. Um-hum.

23 A. And you've asked me about the light object --

24 Q. Yeah.

25 A. -- in the window.

1 Q. Yeah. Let me stop you for a moment.

2 In your meeting with Miss Jangaard and Mr. Durkin on
3 March 8th of 2007, did you discuss this slide that is at page 68
4 of exhibit 7?

5 A. Yes.

6 Q. All right. And in particular there is a light object over
7 the head of Mr. Thompson that you have a red arrow to. Do you
8 see that?

9 A. Yes.

12:52PM 10 Q. Did Mr. Durkin suggest to you or tell you that in his
11 interpretation of the video that this white area over the head
12 of Mr. Thompson was Officer Thompson's hand?

13 A. Yes.

14 Q. All right.

15 Did he tell you that it was Mr. Thompson's hand with
16 the baton raised up over his head?

17 A. Yes.

18 MR. DURKIN: I'm just going to object to the form. Go
19 ahead.

12:52PM 20 BY MR. ORESKOVICH:

21 Q. What, if anything, did you discuss with Mr. Durkin and Miss
22 Jangaard in this meeting concerning whether or not page 68, the
23 slide on page 68, represented Officer Thompson's hand?

24 A. Um, I said that that was a headlight of a vehicle in the
25 background. We can see the vehicle moving from the south to the

1 north on the main roadway. And we can see the vehicle moving
2 and we can see it happens to take that position and then in the
3 next image is continues to move on down the roadway. But that
4 was a headlight of a vehicle, it was not a hand.

5 Q. All right. And you mentioned in the slide on page 68 at
6 the top, you've got Rule 16 A, page three, line 13.

7 And the information that you have there, did that come
8 out of the Rule 16 disclosure?

9 A. Yes.

12:53PM 10 Q. And in particular it states, "The Zip Trip security video
11 shows that Zehm began to back away after he first turned to face
12 Officer Thompson, who continued to move quickly toward Zehm as
13 Thompson held his baton above his head." Correct, sir?

14 A. Yes.

15 Q. Now, the Rule 16 disclosure is dated September 22, 2009.
16 Do you see that in Exhibit Number 2?

17 A. Yes.

18 Q. All right. And in your meeting with Mr. Durkin and Miss
19 Jangaard, as early as March 8th of 2007, would it be fair to say
12:54PM 20 that you had rejected that as your opinion?

21 A. Strongly.

22 Q. Okay.

23 When you say "strongly," tell the Court what the tenor
24 of these discussions were between your self and Mr. Durkin on
25 this date.

1 A. Yeah, it was very uncomfortable. Mr. Durkin was
2 aggressive, loud, um, and very insistent. Mr. Durkin did not
3 appear interested in my opinion.

4 Q. So would I be correct in understanding, in Exhibit Number
5 or page 68 of your report, what you were trying to explain to
6 Mr. Durkin is that's not Mr. Thompson's hand up in the air and
7 that's not his baton, correct?

8 A. Correct.

9 Q. Did Mr. Durkin continue to press and try to get you to
10 change your opinion in that regard?
12:55PM

11 A. I felt as if that was, um, his intent, yes.

12 Q. All right. And he didn't seek out your opinion that that
13 wasn't Mr. Thompson's hand and baton over his head, correct?

14 MR. DURKIN: Object to the form of the question and
15 also object to the foundation of descriptions of AUSA Durkin's
16 demeanor. Go ahead.

17 THE WITNESS: He didn't seek it out, he rejected it.

18 BY MR. ORESKOVICH:

19 Q. All right.

12:56PM 20 This was evidence that you had from your analysis of
21 the video, right, that would indicate that Mr. Thompson did not
22 have his hand up in the air and a baton over his head in that
23 slide at 18:26:14. Correct, sir?

24 A. I want to be clear that my reaction to the assertion that
25 that's a hand is that, no, that's not a hand, it's a headlight.

1 It's absolutely no way that -- there's no changing that. It is
2 a headlight.

3 Q. I got it. Okay.

4 A. So to answer your question, I can't say that he is not
5 swinging a baton, there's no image of a baton in this video at
6 this image.

7 Q. Um-hum.

8 A. And my evidence to Mr. Durkin was, the video's limited. It
9 cannot state that there was a baton or wasn't a baton in his
10 hand. But what he pointed out to as a baton is not there.

11 If it was behind the post, I couldn't comment on that.

12 Q. Um-hum.

13 A. Um, and I don't mean to deviate from your question, I think
14 that answers the question, I just want to make sure that -- I'm
15 not saying he didn't have a baton in his hand, I believe he did
16 have a baton in his hand.

17 Q. Right. Um-hum.

18 A. But this image does not show it.

19 Q. Um-hum. Right.

12:57PM 20 And that would have been your opinion, your expert
21 opinion, based upon your forensic video analysis.

22 A. Correct.

23 Q. If you can go forward, you had mentioned to us that Mr.
24 Durkin had shown you places where he believed that the, that a
25 baton strike occurred to the head of Mr. Zehm.

1 A. Yes.

2 Q. Do you have that anywhere located in your report in exhibit
3 7?

4 A. Yes.

5 Q. Could you go to that place, please.

6 (Witness complies.)

7 A. Slide 98 takes us back to that same image again.

8 Q. Yes.

9 A. The following image at 99, slide 99, also at 18:26:14 --

12:58PM 10 Q. Um-hum.

11 A. -- is, um, where Mr. Durkin said the video shows Officer
12 Thompson striking Mr. Zehm in the head right here (indicating).

13 Q. Um-hum. And you said what to him? What was your opinion
14 at the time?

15 A. Um, I was surprised by that statement. Um, I had looked at
16 the video very carefully and I was, um, obviously would have
17 made note of a baton strike to the head.

18 Q. Um-hum.

19 A. I examined the video with him and I asked him to show me
12:58PM 20 where the baton is. Um, and he -- my recollection is he
21 indicated in that area.

22 Q. Um-hum.

23 A. But I, but I don't recall him specifically pointing out an
24 object saying that that's the baton. Um, I explained that we
25 only see the officer from about his shoulders down or shoulders

1 up.

2 Q. Um-hum.

3 A. We only see Mr. Zehm from the shoulders up. There is no
4 image of a baton here. Um, and there's no apparent reaction.
5 Like we don't see Mr. Zehm falling to the ground. We only have
6 a single image.

7 So my concern was a statement that, here is where he
8 gets hit in the head, would have to come from another witness.
9 And I said that, I said, the video cannot support that.

12:59PM 10 Q. Um-hum.

11 A. It doesn't mean it didn't happen, it's just not in the
12 video.

13 Q. All right. And in fact you have on slide or page 99, the
14 Rule 16 portion that you take objection to; is that correct,
15 sir?

16 A. Yes.

17 Q. Take exception to. And it say, "Immediately after the Zip
18 Trip security video shows Thompson appearing to strike Zehm with
19 his baton for the first time." Do you see that?

12:59PM 20 A. Yes.

21 Q. Now first of all, had you discussed that with Mr. Durkin as
22 to whether or not there was any evidence, video evidence of a
23 baton strike prior to 18:26:14?

24 A. No.

25 Q. All right.

1 It was your opinion that there was not, is that fair
2 to say?

3 A. Yes, they were too far apart.

4 Q. All right. And then this says, "That dispatch broadcasted
5 that the complainant was not sure that Zehm had taken any of her
6 money. This dispatch occurred before Zehm (sic) strikes Zehm a
7 second time with another overhand, up and down baton strike."
8 Correct, sir?

9 A. Where Thompson strikes Zehm a second time, yes.

01:00PM 10 Q. I'm sorry. All right.

11 And did you discuss that with Mr. Durkin and Miss
12 Jangaard, that very same concept, as to whether or not there was
13 a baton strike, a second baton strike at, as evidenced on page
14 99, in your March meeting of 2007?

15 A. Yes. Extensively.

16 Q. All right. When you say "extensively," tell the Court what
17 this extensive conversation was.

18 A. In going through the discussions about motion blur, there's
19 only two images of the baton at this moment or these five or six
01:01PM 20 images.

21 Q. Um-hum.

22 A. Neither of them demonstrate motion blur. And I explained
23 technically what motion blur is and what it does.

24 Q. Let me stop you there.

25 You explained to them in the March 2007 meeting what

1 motion blur was?

2 A. In that meeting and in a subsequent meeting, yes.

3 Q. All right.

4 And so that our Court when he hears this deposition
5 can understand this, what's the significance of -- what is
6 motion blur and what's the significance in this analysis?

7 A. If something is in motion and I mean by fast motion, like
8 consistent with a swinging motion of a baton.

9 Q. Um-hum.

01:01PM 10 A. When the camera samples an image, it samples the image and
11 it takes time to sample that image. If the object is moving
12 faster than the sample, that object will be in blur.

13 Q. Um-hum.

14 A. There are many instances, I think seven at least, six or
15 seven, where Officer Thompson is in front of camera two, some
16 time after this, where the motion blur is evident, very clear,
17 the baton appears to be in multiple positions in a single image
18 because it's moving quickly.

19 Q. Um-hum.

01:02PM 20 A. Can't say necessarily which direction it's moving, but it's
21 moving quickly. So that indicates that the motion of the baton
22 is fast and consistent with a swinging motion.

23 In the two images that we're getting to here, the
24 baton has no motion blur at all. Which would tend to indicate
25 that the baton is not being swung. Or, if it is being swung,

1 that the baton at the moment of the recording is at the end of a
2 swinging motion and the beginning of another swinging motion
3 where the baton would appear to be not in motion.

4 Q. Um-hum.

5 A. So from a -- we're limited by the video and this was my
6 point. We can't infer something that the video can't tell us.
7 All we can say is that this is where the baton is at this moment
8 in time.

9 And one was in front of Officer Thompson at a 45
01:03PM 10 degree angle. A couple of images later the baton was clearly
11 over his head, although we couldn't see the officer, and
12 parallel to the ground.

13 Q. Um-hum.

14 A. Can't say anything more about the video. And I was clear
15 about that.

16 Q. All right.

17 So would I be correct in understanding that as to the
18 video evidence at this point in time does not support, your
19 opinion was it did not support an opinion that there was a
01:03PM 20 second baton strike.

21 A. My point about producing this was that it says there were
22 two baton strikes.

23 Q. Yeah.

24 A. One when Officer Thompson, by timing, was 12 or so feet way
25 from Mr. Zehm, because the assertion in the part six there or

1 the Rule 16, was that he struck him before the broadcast.

2 Q. Um-hum.

3 A. When the broadcast starts, he is about 12 feet away.

4 Q. Yeah.

5 A. 10 to 12, 14 feet away. And that, after the broadcast, he
6 then struck him a second time. Um, and of course that was not
7 my evidence and isn't my evidence.

8 My report says that the officer is in approximately
9 this position during the broadcast.

01:04PM 10 Q. Um-hum.

11 A. The broadcast starts, um, at, um, 18:26:12, lasts about
12 four seconds, and ends at 18:26:16. So it occurred during the
13 time that Mr. Durkin alleges the two baton striking events
14 occurred.

15 Q. Um-hum.

16 A. So the part 16 is not consistent with the video.

17 Q. Was it consistent with the opinions that you offered to Mr.
18 Durkin and Miss Jangaard in March of 2007?

19 A. No.

01:05PM 20 Q. When you were having this discussion with Mr. Durkin about
21 these very issues, these two alleged baton strikes, can you tell
22 us what, was that a heated discussion?

23 A. Um, I tried to be as calm as I could.

24 Q. Um-hum.

25 A. Well, I was calm. But I was assertive to my position.

1 Um, Mr. Durkin was clearly aggressive with his
2 position and was, appeared frustrated that I did not see it his
3 way.

4 Q. Um-hum.

5 A. The discussions were uncomfortable, something I had never
6 experienced. I've done thousands of cases, I have not
7 experienced this kind of aggression when we're talking about my
8 professional opinion.

9 Um, and at one point I told Mr. Durkin that, I have
01:06PM 10 been doing this a long time and video is what it is. Um, and,
11 um, I'm not going to change my opinion.

12 Q. In the course of the meeting that occurred in March of
13 2007, were questions asked of you as to whether or not the
14 position of the baton or the interpretation of the video could
15 be consistent with a baton strike?

16 A. Yes.

17 Q. All right.

18 I jumped around a little bit and I want to make sure
19 later when the Court reviews this deposition transcript. Can we
01:06PM 20 go to that section of the report that we would be talking about.

21 (Witness complies.)

22 A. Um, we can -- image 98 --

23 Q. Okay.

24 A. -- is the area.

25 Q. All right.

1 What was the question asked to you about whether or
2 not it was consistent with a baton strike. Whether what was
3 consistent with a baton strike?

4 A. We eventually got there. And I'm not sure if that was the
5 first meeting or the second meeting.

6 Q. Okay. Let me just clarify this.

7 There was one meeting that occurred in March of 2007.
8 Was there yet a second meeting that occurred on August the 3rd
9 of 2007, I think.

01:07PM 10 A. Yes.

11 Q. Okay.

12 And when you say, "we eventually got there," what are
13 you describing, please?

14 A. At one point I think that I got the impression that Mr.
15 Durkin was going to give up on, um, um, on the idea that that
16 was a hand in the window.

17 Q. Um-hum.

18 A. That that was a baton in his hand. And clearly I wasn't
19 going to change my opinion in regards to the identification of
01:08PM 20 those objects.

21 So I wanted him to understand what the video can
22 support. And in going from image 98 to image 99, the video can
23 support that Officer Thompson, as he moved forward, moved down
24 lower slightly in the image. Slightly.

25 Q. Um-hum.

1 A. And I couldn't really measure it at that time or I wasn't
2 asked to measure it.

3 Um, and that, you know, it could be consistent with a
4 swinging motion of a baton. So in other words, if he's in one
5 position, moves forward and he's lower, it could be because he
6 has swung a baton.

7 Q. Um-hum.

8 A. And I said, now this could be consistent with many things.
9 It could be consistent with him getting down into an, I'm going
01:08PM 10 to tackle him position; could be consistent with, you know, I'm
11 ducking from something; could be consistent with many things,
12 one of which could be the swinging motion of a baton.

13 And I absolutely conceded that, because it's quite
14 appropriate to say, is it possible, is that consistent with that
15 motion. And I agreed.

16 Q. That it was consistent with the motion, but it was your
17 opinion that at least with respect to that, that the video
18 evidence didn't support the conclusion that there was a baton
19 strike at that point, correct?

01:09PM 20 A. It could -- the video could not be used to form an opinion
21 that that was a baton strike, just that it's a possibility.

22 Q. All right. And that it was a possibility that it was a
23 baton strike, but a possibility that Officer Thompson, as he
24 ducked down, was ducking down because of other things as well,
25 correct?

1 A. Right. Well I want to be clear. I put forward, if you
2 were to put to me these possibilities --

3 Q. Yeah.

4 A. -- and I listed a few, I would agree with all of them.
5 That the video could say, yeah, it's supportable of that.

6 If the, if something else were asserted that is not
7 consistent with the video, I would say, no, the video doesn't
8 support that.

9 Q. Um-hum.

01:10PM 10 A. The video doesn't support an overhand swinging motion of a
11 baton that strikes Mr. Zehm. We don't see a baton, we don't see
12 motion, we don't see a reaction from Mr. Zehm at this time.

13 So the video can not be used to prove that assertion.
14 But what the video can be used to suggest is that that might be
15 a swinging motion and this is the officer's motion at that time.
16 And I say, it could be.

17 And that was the agreement that we worked that if he
18 asked me the question, if that, specifically, if he asked me the
19 question, is that consistent with a swinging motion of a baton,
01:10PM 20 I would agree with that, it could be.

21 Q. When you say, "that was the agreement that we had," let me
22 see if I get this straight.

23 You had, you're not sure if this occurred in the March
24 discussion or a later one in August of 2007. Correct?

25 MR. DURKIN: Object to the form of the question. Go

1 ahead.

2 THE WITNESS: I believe this is the second meeting.

3 BY MR. ORESKOVICH:

4 Q. All right. And at that point in time how long had you
5 spent discussing with Mr. Durkin whether or not you would
6 support his opinions that, for instance, as they're set on --
7 let me say this differently.

8 As I interpret what you're saying to me in both these
9 meetings, Mr. Durkin was trying to convince that you there were
01:11PM 10 baton strikes at 18:14 and 15 and you said, that's not my
11 opinion, and you spent two different meetings discussing that at
12 length, correct?

13 MR. DURKIN: Object to the form and foundation. Go
14 ahead.

15 THE WITNESS: That's exactly correct.

16 BY MR. ORESKOVICH:

17 Q. All right.

18 A. And the first meeting was one where I was there as a
19 courtesy visit.

01:11PM 20 Q. Right.

21 A. The City asked me to go.

22 Q. Right.

23 A. So I'm not, they're not my client, I'm just simply saying,
24 here is the support for my report.

25 Q. Yeah.

1 A. So we did discuss this.

2 The second meeting, after a period of time in that
3 second meeting, I was released by the City and at that point
4 accepted the request to assist the FBI.

5 At that point I believe is when this discussion came
6 up, because now I'm doing my best to assist them to accurately
7 interpret the video, with the belief that they're accepting my
8 assistance.

9 Q. Um-hum.

01:12PM 10 You were retained as an expert by the FBI in the
11 August 2007 meeting, correct, sir?

12 A. Yes.

13 Q. All right. And did you form some agreement with Mr. Durkin
14 that, although it wasn't your opinion that a baton, that the
15 video evidence supported, you could opine that a baton strike
16 occurred at that point, if he asked you a question, whether or
17 not this dipping motion, for lack of a better term, of Officer
18 Thompson, was consistent with a baton strike, you would say yes?

19 MR. DURKIN: Object to the form. Go ahead.

01:12PM 20 THE WITNESS: My expectation was that the question
21 would be asked is, that dipping motion --

22 BY MR. ORESKOVICH:

23 Q. Um-hum.

24 A. -- is consistent with many things, including a baton
25 strike, correct? And I would agree, yes.

1 Q. All right.

2 And there were things that it could be consistent with
3 that were not a baton strike whatsoever, correct?

4 A. Sure.

5 Q. Ducking was one that you had stated, correct?

6 A. Yes.

7 Q. What other examples did you give Mr. Durkin -- and was Miss
8 Jangaard present in the August meeting? She was, wasn't she?

9 A. Yes.

01:13PM 10 Q. All right.

11 What other examples of things that it could be
12 consistent with, other than a baton strike?

13 A. I believe that we discussed, I described a position of
14 going to a tackle or --

15 Q. Um-hum.

16 A. -- a crouching position, for whatever purpose.

17 Q. Um-hum.

18 A. I don't recall giving other directions. Like other, um,
19 examples. But I am certain that I recall getting into a
01:13PM 20 defensive or an attack posture, where somebody would crouch
21 down.

22 Q. Um-hum.

23 A. And then I conceded, of course, it could obviously also be
24 the swinging motion of a baton or of an arm, because we don't
25 see a baton.

1 Q. Right.

2 MR. ORESKOVICH: Do we need to stop now? We need to
3 change tapes apparently, so we need to take a break.

4 THE VIDEOGRAPHER: This will conclude tape number one.
5 The time is now 1:14 p.m.

6 (Break taken.)

7 THE VIDEOGRAPHER: This is the continued videotaped
8 deposition of Grant Fredericks and tape number two. The date is
9 March 2, 2012. The time is 1:27 p.m.

01:28PM 10 MR. ORESKOVICH: All right.

11 BY MR. ORESKOVICH:

12 Q. Let's -- can we just continue? All right. Thank you. I
13 have a few more questions about what we have on page 99.

14 The portion that you have in red, the last sentence
15 says, "This dispatch occurred before Thompson strikes Zehm a
16 second time with another overhand, up and down, baton strike."
17 Do you see what I'm referring to?

18 A. Yes.

19 Q. That came out of the Rule 16 disclosure; is that correct?

01:28PM 20 A. Yes.

21 Q. All right. And tell us what discussion that you had with
22 Mr. Durkin and Miss Jangaard concerning an overhand, up and down
23 baton strike, please.

24 A. Um, I rejected that. That's not my evidence.

25 Q. You say, "that's not my evidence," is that not your

1 opinion?

2 A. Correct.

3 Q. All right.

4 And was this in the meeting of March 8th of 2007?

5 A. It was in both.

6 Q. Okay.

7 How long, if you can tell me, in these meetings, the
8 second meeting that you had in August of 2007, how long did that
9 last?

01:29PM 10 A. This discussion or the meeting?

11 Q. The meeting and total first.

12 A. The first meeting -- I have a record of it.

13 Q. Um-hum.

14 A. Because I was paid for the meeting. But my recollection is
15 it was over an hour, perhaps two hours. Um, I could be more
16 specific if I looked at my record.

17 Q. All right.

18 And then in the meeting, the second meeting, how much
19 time was spent discussing this issue of two different baton
01:29PM 20 strikes and whether there's an overhand, up and down baton
21 strike?

22 A. In the second meeting?

23 Q. Yes.

24 A. Um, some time, I believe it was the second meeting, where I
25 offered to do a reenactment.

1 Q. Um-hum.

2 A. Um, where I asked Mr. Durkin to stand up and take the
3 position of Mr. Zehm and I took the position of Officer
4 Thompson, and I demonstrated what the video shows the baton
5 position to be in.

6 Q. Um-hum.

7 A. And that we cannot infer motion from that. So all we can
8 say is that, here's the baton. A number of things could be
9 happening. Officer Thompson may be swinging it.

01:30PM 10 Q. Um-hum.

11 A. But as I said, that swinging motion would have to be at the
12 kind of apex of the motion, if that's the correct word, where
13 the baton is back and as it's about to go forward, where it's
14 not in a swinging motion, because we would see motion blur.

15 Q. Um-hum.

16 A. So I said, it may be that he's swinging at him. The video
17 doesn't, we can't use the video to say that and therefore that
18 is not my opinion. My opinion is simply, that's the baton and
19 it's in the air.

01:30PM 20 Q. All right.

21 So you talked about it orally in two different
22 meetings and you demonstrated it in this meeting in August of
23 2007. Is that correct?

24 A. That's correct.

25 Q. To Mr. Durkin and Miss Jangaard?

1 A. That's correct.

2 Q. Do you think you could have been any more clear in any of
3 these meetings that you rejected the statements that's
4 attributed to you, for instance, on page 99 of your exhibit 7?

5 A. Could not have been more clear.

6 Q. Did you have some discussion with Mr. Durkin and Miss
7 Jangaard in any of the meetings in March or August of 2007,
8 concerning whether or not Otto Zehm held a bottle, a Pepsi
9 bottle up?

01:31PM 10 A. Yes.

11 Q. And does your exhibit 7 demonstrate that anywhere?

12 A. No.

13 Q. Okay. Can you by your recollection tell us -- can I have
14 the stills? Tell us, while we're getting an exhibit, what it is
15 that you're talking about, please.

16 A. In my initial report I articulated where the baton, where
17 the bottle is in the images.

18 Q. Yeah.

19 A. Over his head at 18:26:15, slide 101, in the exhibit 7.

01:32PM 20 Q. Um-hum.

21 A. You can see, and I'll point for you, I'll point at the,
22 roughly the center of the image where Mr. Zehm is seen between
23 an up and down roof joint post --

24 Q. Um-hum.

25 A. -- and a display. I identified that as the, um, bottle and

1 Mr. Durkin asked me, how can you tell that's the bottle? And my
2 impression was that he accepted my explanation that that was the
3 Pepsi bottle. I didn't get an argument, I don't recall an
4 argument rejecting that.

5 And then what I don't have here, because I have ended
6 my exhibit 7 at the point where my disagreement with the part 16
7 or the Rule 16 concludes.

8 Q. Um-hum.

9 A. But if we had gone on further when Mr. Zehm is on the
01:33PM 10 ground, visible in two different camera views he is holding the
11 bottle, um, um, above his head. Um, and he's holding it, as I'm
12 describing, by the top and by the bottom, with the right and the
13 left hand, and he's holding it in front of him.

14 And I had documents that demonstrated that in my, at
15 least a few reports, that showed that this is the Pepsi bottle.
16 Or the pop bottle, soda bottle.

17 Q. Um-hum.

18 A. Does that answer your question?

19 Q. Does in part. I understood from our earlier discussion
01:34PM 20 that the government had talked to you about the portion of your
21 report that pertained to the pop bottle and tried to persuade
22 you to take that out of there. Am I right or wrong about that?

23 A. I was directed to remove the, um, um, the notations that I
24 had made that that's the Pepsi bottle.

25 Q. Um-hum.

1 A. I had other demonstrative exhibits that were produced in a
2 PDF form that made, that supported my initial report and my
3 supplementary report, that identified certain activity. And I
4 was directed to remove the Pepsi bottle discussion from that.

5 Q. All right.

6 And in particular would that include the Pepsi bottle
7 discussion with respect to that bottle that you have shown to me
8 at page 101 of exhibit 7, 18:26:15?

9 A. My recollection was it was further down when Mr. Zehm was
01:35PM 10 on his back on the ground.

11 Q. Um-hum.

12 A. That's what -- I was just told, remove the Pepsi bottle
13 from that, I wasn't told why. I don't recall whether it
14 included at the center of image, the one we're looking at, at
15 18:26:15.

16 Q. Was there some dispute between you and the government,
17 either Mr. Durkin or Miss Jangaard, on whether or not the video
18 evidence itself supported the conclusion that Mr. Zehm was
19 holding a Pepsi bottle?

01:35PM 20 MR. DURKIN: Let me object to the form, but go ahead.

21 THE WITNESS: Mr. Durkin challenged it, but appeared,
22 my recollection is he accepted, once I pointed it out, he didn't
23 reject it any further.

24 BY MR. ORESKOVICH:

25 Q. Did anyone give an explanation to you as to why they wanted

1 those references where you pointed out the Pepsi bottle taken
2 out of the report?

3 A. No.

4 MR. DURKIN: Just so we're clear, what report are you
5 talking about? Are you talking about your supplemental report?
6 Because they're in your original report, right?

7 THE WITNESS: Yes.

8 MR. DURKIN: Okay.

9 THE WITNESS: Um, I produced a number of demonstrative
01:36PM 10 exhibits. Many demonstrative exhibits. Um, among them were
11 references to the soda bottle.

12 And I was asked to change that report to remove that.
13 Um, I didn't feel comfortable removing that because I thought
14 that that was probably an issue that would assist.

15 I spoke to, um, um, Special Agent Jangaard about why
16 it was to be removed, she told me that Mr. Durkin wanted it
17 removed. I recall us going back and forth a little bit and
18 eventually she told me, "Just leave it in." Um, that's my
19 recollection. And it was left in.

01:37PM 20 Q. When you say, "I have prepared a number of demonstrative
21 exhibits," I've gotten a little bit confused now.

22 So what I want to do is see if we can track this a
23 little bit better. You did an original report that we have
24 marked I think already as Exhibit Number 3. Correct?

25 A. Yes.

1 Q. All right. And then you did a supplemental report at the
2 request or at the direction of the government, did you not,
3 that's been marked as exhibit 4?

4 A. Yes.

5 Q. And that occurred, the supplemental report occurred after
6 your August of 2007 meeting; correct, sir?

7 A. Yes.

8 Q. And where I'm trying to understand is the discussion as to
9 which report it was where the original instruction to you was to
10 remove the references to the Pepsi bottle.

01:37PM

11 A. I produced, um, a large number of exhibits for the
12 government. Um, and it's among those exhibits. Um, and I think
13 one is actually labeled, um, Pepsi bottle.

14 Q. Um-hum.

15 A. And that should be in a package that you've got, but it's
16 among the exhibits and I believe it details the Pepsi bottle.

17 I have a recollection of annotations pointing out the
18 Pepsi bottle, um, and I think they still are in the package
19 somewhere.

01:38PM

20 Q. All right.

21 A. And I can, there is an e-mail communication regarding the
22 removal of this, I believe.

23 Q. There was?

24 A. There is. And it's in the package.

25 Q. What do you mean it's in the package?

1 A. I was directed to provide a copy of my full record --

2 Q. Oh, I see.

3 A. -- for this proceeding.

4 Q. Yeah.

5 A. Including all of the e-mails, all e-mails, all documents,
6 so I've done that.

7 Q. All right.

8 Was it your, in these first two meetings, August, or
9 March of 2007 and August of 2007, was it your understanding or
01:39PM 10 your impression, I guess is a better question, that Mr. Durkin
11 was trying to get you to change your opinion with whether or not
12 the video evidence supported a conclusion of baton strikes at
13 18:26:14, 15 and 16?

14 MR. DURKIN: Object to the form and foundation. Go
15 ahead.

16 THE WITNESS: Yes.

17 BY MR. ORESKOVICH:

18 Q. And would I be correct in understanding, sir, you have
19 never changed that opinion; is that correct?

01:40PM 20 A. That's correct.

21 Q. And you've so communicated that to the government?

22 A. Yes.

23 Q. How many different times do you think you've told them that
24 it is not my opinion that the video evidence supports a baton
25 strike at 18:26:14?

1 A. It's not contained in any of my reports.

2 Q. Yeah.

3 A. It's not contained in any of my exhibit that I was asked to
4 produce. It was part of two comprehensive and heated
5 discussions. Um, the Grand Jury does not -- during the Grand
6 Jury testimony Mr. Durkin did not put to me, "Is this an image
7 of Officer Thompson hitting Mr. Zehm with a baton?" I would
8 have said no. He asked, "Is it consistent with it?" I agreed.
9 Because that was our agreement.

01:41PM 10 I could not have been more clear, short of producing a
11 document that says that I reject all of this, um, I couldn't
12 have been more clear.

13 Q. You referenced your Grand Jury testimony and I had that
14 marked there as Exhibit Number 6. A transcript of it. Would
15 you look at that.

16 A. (Witness complies.)

17 Q. Is that the Grand Jury testimony you were referencing?

18 A. Yes.

19 Q. And as I understand your prior testimony, after, at some
01:42PM 20 point in time after the August 2007 meeting, an agreement was
21 formed with Mr. Durkin that if he, although you weren't changing
22 your opinion, if he asked a question as to whether or not the
23 motion was consistent with a baton strike, you would answer that
24 question yes; is that correct, sir?

25 A. Well, given our agreement I think it was a fair --

1 Q. Yeah.

2 A. -- a fair agreement. It was a fair question. That if, um,
3 if he's asserting that this is a baton strike --

4 Q. Um-hum.

5 A. -- and by baton strike I don't mean just swinging a baton,
6 he's asserting that the baton was swung and hit Mr. Zehm. I was
7 clear that I would not support that.

8 Q. Um-hum.

9 A. Not that it didn't happen, but the video can't say that.

01:42PM 10 So I don't want to obstruct, if that's what occurred and
11 somebody else sees that and can testify to that --

12 Q. Um-hum.

13 A. -- I don't want to limit the value of the video.

14 Q. Um-hum.

15 A. So um, the motion where Officer Thompson is down slightly
16 in the image, we can't discount that as possibly a baton strike.

17 So the agreement was, and he put it to me, are you
18 saying it's consistent, I said, yes, exactly. I said it is. I
19 believe was my response in the Grand Jury. So he asked me the
01:43PM 20 question, is this image consistent with a motion --

21 Q. Um-hum.

22 A. -- of an up and down baton strike. My answer was yes, it
23 is. Because that was our agreement.

24 And very clearly he knew when he asked me the question
25 and I knew when he asked the question that he wasn't asking me

1 if this was the connection of a baton.

2 Q. Um-hum.

3 A. Um, and I didn't have too much of a problem with that
4 question.

5 Q. Um-hum.

6 All I'm getting to is, for a period of time, as I
7 understand it, for two different meetings he tried to persuade
8 you to change your opinion, correct?

9 A. I felt that pressure, yes.

01:43PM 10 Q. All right. And when that didn't occur, he formed an
11 agreement with you that if a question was phrased a certain way
12 as to whether or not this motion was consistent with a baton
13 strike, you would have said yes, right?

14 MR. DURKIN: Object to the form. I think it
15 mischaracterizes the testimony, but go ahead.

16 THE WITNESS: Yeah, our agreement was not baton
17 strike, our agreement was the motion of a baton.

18 BY MR. ORESKOVICH:

19 Q. All right.

01:44PM 20 A. A baton motion was our agreement.

21 Q. All right.

22 And that was your agreement, although your opinion
23 evidence was that the video evidence itself did not support the
24 conclusion that a baton strike occurred.

25 A. You know, let's define what the term "baton strike" means.

1 Q. Um-hum.

2 A. Does a baton strike mean the swinging and connecting with a
3 baton or does it just mean the swinging motion, a striking
4 motion.

5 Q. Yeah.

6 A. My interpretation of that was that it was just simply the
7 striking motion --

8 Q. Um-hum.

9 A. -- of the baton. And I didn't have a problem with that
01:45PM 10 question if it were phrased that way, because my opinion is that
11 the video is consistent with a swinging motion of a baton. It's
12 also consistent with many other things. But the video can be
13 used to say that that motion is consistent with that. That was
14 my evidence. And I support that evidence.

15 Q. That it was consistent with a baton strike, but also could
16 be consistent with other things, correct?

17 A. I was very clear it could be consistent with a number of
18 other things.

19 Q. And those questions weren't asked for you in the Grand Jury
01:45PM 20 testimony?

21 A. No. What it was not consistent with was a connection of a
22 baton. And a visible baton in the image. It was not consistent
23 with that.

24 Q. Right.

25 MR. DURKIN: I'm going to move to strike, but --

1 nonresponsive. There's no question before him.

2

3 BY MR. ORESKOVICH:

4 Q. Was it consistent with a baton strike?

5 A. What is your definition of strike? And I don't mean to be

6 --

7 Q. Connecting.

8 A. No, it's not consistent with that. Thank you.

9 Q. You prepared a supplemental report and it was Exhibit

01:46PM 10 Number 4, correct, sir?

11 A. Yes.

12 Q. Why was that report prepared?

13 A. Um, Mr. Durkin explained to me that my initial report
14 contained observations that he felt that I wasn't, um,
15 qualified. And more so he said he had somebody better
16 qualified.

17 Q. Um-hum.

18 A. A Doctor Gill, who was going to get into issues related to
19 human factors. And that's not an uncommon request.

01:47PM 20 So he asked if I would produce another report that
21 removed issues of use of force and human factors that was not my
22 area of expertise. And so I agreed to do that.

23 Q. Yeah. Your area of expertise is in forensic video
24 interpretation however, correct?

25 A. It is, correct, yes.

1 Q. And what you were prepared to testify to or not testify to
2 was based upon your expertise in forensic video interpretation,
3 correct, sir?

4 A. That's correct.

5 Q. At some point in time did you learn that the defense had an
6 expert by the name of Mike Schott?

7 A. Yes.

8 Q. All right.

9 A. Two years later.

01:47PM 10 Q. Yeah. You actually went to Yakima, didn't you, on October
11 13th, 2011?

12 A. Yes.

13 Q. All right. And that was during Mr. Thompson's trial, sir,
14 is that correct?

15 A. That's correct.

16 Q. All right. And um, before that, before you had gone to
17 Olympia or I'm sorry, Yakima, on October 13th, 2011, had you
18 been provided with a copy of a report by Mr. Schott?

19 A. Yes.

01:48PM 20 Q. All right. Who provided you with a copy of the report?

21 A. It was provided to me by e-mail or by mail, I believe, by
22 Miss Jangaard.

23 Q. Okay.

24 And did you have discussions with either Miss Jangaard
25 or Mr. Durkin concerning any of the conclusions that were

1 contained in Mr. Schott's report?

2 A. I did.

3 Q. With which, was it Mr. Durkin or Miss Jangaard or do you
4 know?

5 A. I believe it was with Miss Jangaard.

6 Q. All right.

7 A. And Mr. Durkin might have been there, I think my comments
8 were directed toward Miss Jangaard. I don't know if Mr. Durkin
9 was there for certain, but he might have been.

01:49PM 10 Q. All right. Was this an in-person meeting or a telephonic
11 meeting?

12 A. In person.

13 Q. And where did the meeting take place?

14 A. Um, in the U.S. Attorney's Office here in this building.

15 Q. And what was discussed concerning Mr. Schott's report, if
16 you can recall?

17 A. Um, very little. I mentioned that I had reviewed the
18 report, um, I mentioned that he's got a lot right.

19 Q. Um-hum.

01:49PM 20 A. I referenced, um, the artifact in the window. And I
21 referenced two images that appear to have been pulled out of an
22 animation that relate to the baton strike, the alleged baton
23 swinging at 18:26:14 that didn't occur.

24 Q. Um-hum.

25 A. The animation shows a baton there and it shows something

1 that is not in the video. So, um, it's a work of art, you know,
2 was how I see it. Um, we had a discussion about Mr. Schott and
3 how I know him. And I explained that I only know him briefly
4 from talking to other analysts in the field on other cases.

5 Mr. Schott does not attend, he's not part of our
6 organization, I think he's an independent video analyst. He
7 hasn't been trained by any organization that I'm aware of. He
8 has testified against a few analysts I know, and I explained
9 that to Mr. Durkin.

01:50PM 10 Q. Um-hum.

11 A. He asked who. I provided him with two names of analysts
12 who know Mr. Schott better than I do and could, they could
13 assist him in, um, evaluating his work.

14 Q. Um-hum.

15 A. Or his experience, his, his work on other cases.

16 Q. Um-hum.

17 A. And the discussion didn't really go into any other detail
18 about his report. Um, at some point there was a, I asked, do
19 you want me to do anything with his report? Usually I write
01:51PM 20 rebuttals or do an examination. And I was told not to bother.

21 Q. Um-hum. And this is before you went to Yakima; is that
22 correct, sir?

23 A. About a month before then.

24 Q. Okay.

25 When you went to Yakima on October 13th of 2011, were

1 you scheduled to leave the country the following day?

2 A. Um, when I had talked to Mr. Durkin about a month before,
3 at that time I was on standby for a trial.

4 Q. Um-hum.

5 A. And that I thought it was likely I would be leaving that
6 weekend, certainly, I said, don't count on me to be available
7 the following week.

8 Q. Um-hum.

9 A. But when we met on, in Yakima, I said I told him that that
01:52PM 10 had been cancelled and that I was available, I'm not travelling.
11 We did talk about that.

12 Q. You were available to testify on the 14th or later if you
13 needed to?

14 A. Yes.

15 Q. All right. And what discussion did you have with Mr.
16 Durkin about whether to testify, whether you were going to be
17 testifying in Yakima on the 14th?

18 A. Um, I was directed to meet Mr. Durkin at the prosecutor's
19 office at 5 p.m. the day before I was to testify.

01:52PM 20 I checked into the hotel across the street. Um, I
21 walked, I walked across the street to the office and I waited
22 for about 15 minutes, saw Mr. Durkin enter through another
23 doorway, um, and I waited for about another half hour, Mr.
24 Durkin came out, so I had been there about 45 minutes.

25 Um, we had a very pleasant conversation, small talk

1 for about 15 minutes at least. And then he told me that the
2 reason he was late was he notified the judge that he wasn't
3 going to be calling you.

4 Q. Was not going to be calling you?

5 A. Yes.

6 Q. Um-hum.

7 A. And it was, you know, a very, um, very friendly
8 conversation.

9 Q. Yeah.

01:53PM 10 A. Um, and I said, yeah, I'm not surprised, I didn't think I
11 was going to be helpful to your case. And he smiled and he
12 said, and he shook his head and he said, probably not.

13 Q. In fact, didn't you say to him, my testimony would have
14 been helpful to the defense?

15 A. No, I didn't say that.

16 Q. All right. Just wouldn't have been helpful to his case.

17 A. Correct. And after that, um, a bit more small talk and he
18 said, um, you know, we talked about the trip to the UK that's
19 not occurring because it's actually supposed to be occurring
01:53PM 20 next month now. Um, and um, he said, please submit your bill
21 and thanks for your assistance and I checked out of the hotel
22 and went home.

23 Q. Your statement, which was exhibit 1, why did you come
24 forward with that, sir?

25 A. Um, well as I said, I was concerned, um, of a potential

1 miscarriage of justice. If, um, I think that if, I felt that if
2 the Court believed that this was my evidence, if the defense
3 believed that this was my evidence, my opinion, or if any other
4 expert relied on this to form their opinion, that, um, there
5 would be a miscarriage of justice.

6 And I sought legal advice to insure that I wasn't
7 reading something in there that wasn't there. And um, I did my
8 own research. Um, and it appeared to me that, um, the
9 assertions in, in this Rule 16 document were important to the
01:56PM 10 trial. And um, I was very concerned that this document was used
11 to influence the Court. I felt it was my responsibility to
12 insure that didn't happen.

13 Q. When did you first see the Rule 16 document?

14 A. September, 2009.

15 Q. Okay.

16 That was some two years after you first started
17 meeting with the government; is that fair to say?

18 A. That's correct.

19 Q. All right.

01:56PM 20 Did you discuss with them at that point in time the
21 fact that the Rule 16 document did not accurately set forth your
22 opinions, in your mind?

23 A. I didn't.

24 Q. Why not?

25 A. I was confused regarding its use, number one. I know that

1 I had not -- first of all, I did not participate in the
2 production of the report, of the Rule 16 document.

3 Q. Um-hum.

4 A. No exhibits I produced supported this. I anticipated, um,
5 a deposition, a deposition before trial, if I were to testify.
6 I anticipated, um, testifying at trial likely and I wouldn't
7 adopt this.

8 I had made a number of efforts to, um, insure that Mr.
9 Durkin understood my opinion and um, I didn't think there was
01:57PM 10 anything more I could do. And so to, once again, complain about
11 more evidence, another opinion, I didn't think would have any
12 impact.

13 Q. I may have jumped around a little bit.

14 In terms of your document, your video document here,
15 exhibit number 7, I went through bits and pieces of this.

16 Have we covered all of the areas where you disagree
17 with the representation in the Rule 16 document, Exhibit Number
18 2?

19 A. I don't think so.

01:58PM 20 Q. All right.

21 A. I think the first image of Officer Thompson entering on
22 slide 40 at 18:26:09, um, articulates an opinion that I don't
23 hold. Um, on the Rule 16, page three, line nine, which
24 describes how Officer Thompson entered, it states that he, um,
25 pulled out the baton and held it in a position over his right

1 shoulder and then quickly traveled the length of the north
2 aisle.

3 And that's not my evidence. It is not consistent with
4 the video.

5 And I've described in the exhibit 7 from line 40,
6 slide 40, through to slide 55, I outlined my observations, which
7 reports address those observations and the inconsistency between
8 all of my work and my opinion and the statement in the part 16
9 or Rule 16.

01:59PM 10 Q. Your statement, we marked it as exhibit 1. Do you affirm
11 that that's an accurate statement still to this day?

12 A. Yes.

13 Q. You have before you Exhibit Number 5, which is a 302 report
14 dated March 8, 2007.

15 Do you see that, sir?

16 A. Yes.

17 Q. And this was one of the dates where you spoke with Mr.
18 Durkin and Miss Jangaard concerning a number of different
19 possibilities that the images could be consistent with, correct,
02:00PM 20 sir?

21 A. Correct.

22 Q. And this was one of the dates where you continued to
23 maintain your opinion as you, opinions, as you set forth today,
24 concerning what the video does or does not show with respect to
25 baton swings or strike, correct, sir?

1 A. That's correct.

2 Q. And with respect to what occurred in that meeting on March
3 8th of 2007, if the report here, if the conclusion were drawn
4 from the report that you had actually changed your opinion from
5 what you said in your original report concerning baton strikes,
6 the absence of baton strikes at 18:14 or 15, if the conclusion
7 was that you had changed your opinion, that was incorrect based
8 upon what you were telling the government; isn't that fair to
9 say?

02:01PM 10 MR. DURKIN: I'm going to object to form. Go ahead.

11 THE WITNESS: Not only is it incorrect --

12 BY MR. ORESKOVICH:

13 Q. Yes.

14 A. -- I produced, um, dozens of exhibits afterwards.

15 Q. Um-hum.

16 A. None of which relate to, none of which state that or agree
17 to that.

18 So I did not change my mind. And I never formed an
19 opinion that contradicts what I've been presenting here today.

02:02PM 20 Q. I need to get my arms around just a bit.

21 When you say, "a number of exhibits," and I'll
22 represent to you we got exhibits, photographs that go forever.
23 And I'm not sure whether I do or do not have the exhibits that
24 you're referring to.

25 So would they be contained in the file that you have

1 brought here today?

2 A. Yes.

3 Q. Okay. Now at one point in time did you prepare a
4 demonstrative exhibit for the government, and I may misstate the
5 title of it, that had motions one through 13. Do you know what
6 I'm referring to?

7 A. I think it's called Baton Motions.

8 Q. There you go. And did you entitle it Baton Motions?

9 A. I believe I did.

02:03PM 10 Q. All right.

11 And did you, with respect to the exhibit itself,
12 that's one you turned over to the government?

13 A. Yes.

14 Q. And did the exhibit show any baton motions at 18:26:14?

15 A. That was labeled baton motion number one.

16 Q. All right.

17 A. I should probably -- can you give me a moment to be clear
18 on that?

19 Q. Yeah.

02:03PM 20 A. I just want to clarify. The answer would be no.

21 Q. All right.

22 A. The first baton motion is at 18:26:15.

23 Q. Um-hum.

24 A. And it simply is an image of a baton.

25 Q. Oh.

1 A. And in motion only because it's in the officer's hand and
2 the officer is in motion. But there's no motion blur. And I
3 was very careful about that description.

4 Q. All right. And when would the exhibit have shown any
5 striking motion by --

6 A. At 18:26:37.

7 MR. DURKIN: And just for the record, striking meaning
8 impact, so that we have clarity on this discussion?

9 THE WITNESS: Thank you. And by striking, my opinion
02:04PM 10 is that this is a striking motion, a motion with the baton down
11 toward Mr. Zehm.

12 BY MR. ORESKOVICH:

13 Q. Um-hum.

14 A. And I can't say whether or not contact was made.

15 Q. Um-hum.

16 A. But I think it's quite likely.

17 Q. Um-hum.

18 A. And that would have been motion number three and motion
19 number four, I believe.

02:05PM 20 Q. I think we're just about done, let me just take a minute.

21 (Pause.)

22 I want to just make sure we clarify any issues with
23 respect to any alleged improprieties.

24 Explain to us, when you were first hired, you were
25 hired by Mr. Driscoll and paid for by the City Police; is that

1 accurate.

2 A. The agreement went back and forth between different
3 departments within the City.

4 Q. Yeah.

5 A. I believe it was Mr. Trepeddi's office, whoever
6 Mr. Trepeddi works, who ended up authorizing the payment. I
7 don't recall where the payment came from.

8 Q. Okay. And did you have some contact at some point in time
9 with the City Attorney's Office that Mr. Durkin took issue with?

02:06PM 10 A. Um, well, on two occasions.

11 Q. Yeah.

12 A. The second meeting, um, Mr. Durkin met me at the door, um,
13 well when I was inside the room, um, and the first, um,
14 communication was, you're to have no more contact with your
15 client, he said the City, you're now working for the FBI. Um,
16 and I thought that was odd.

17 Q. Um-hum.

18 A. And that obviously wasn't going to happen. Um, Mr. Durkin,
19 um, was very insistent, very directive as if I had no choice,
02:07PM 20 that I was now the FBI's expert, I'm to have no more contact
21 with the City.

22 And I explained to him that I've been doing this for a
23 long time and that's not how it works.

24 Eventually I invited him to call my client and have
25 that discussion with the client and I stepped outside and --

1 have we don't this before? Have we already talked about this?

2 Q. Not on the record.

3 A. Okay. Um, I suggested, after a bit of a discussion, um,
4 that he should call my client. Um, and I offered to step
5 outside. And I did.

6 And Miss Jangaard came with me and we, I think we sat
7 together for about 45 minutes. And I could hear some very loud
8 discussions in the conference room, we were quite close.

9 After probably 45 minutes I was called back in and to
02:08PM 10 my surprise, um, I think it was Mr. Caven (sic).

11 Q. Craven?

12 A. Craven. Thank you. Um, told me that they have had a
13 discussion, that, um, the City, they're satisfied with the work
14 that I've done, which I had completed six months earlier.

15 Q. Um-hum.

16 A. And that the City doesn't require my services any more and
17 I'm free to assist the FBI.

18 Q. Um-hum.

19 A. I was surprised, but quite happy to assist the FBI. And we
02:08PM 20 hung up the phone and I turned to them and I said, how can I
21 help you? Um, so that was that, that discussion.

22 Um, and if you could answer your or ask your question
23 again I think, I don't want to --

24 MR. DURKIN: Let me -- excuse me. Let me insert an
25 objection.

1 I'm going to move to strike, nonresponsive, there's no
2 question before him, he had a lengthy narrative. Go ahead.

3

4 BY MR. ORESKOVICH:

5 Q. When we were interviewing you earlier this morning there
6 was one point in time where I understood you to tell me that Mr.
7 Durkin threatened you to take you before a Grand Jury, that's my
8 term, and that's the area that I want to inquire about and if
9 I'm using improper language you correct me.

02:09PM 10 A. Um-hum.

11 Q. Was there a time where you had a heated or a disagreement
12 with Mr. Durkin where he threatened to take you before the Grand
13 Jury?

14 MR. DURKIN: Object to form. Go ahead.

15 THE WITNESS: Um, I was, um, very calm and quiet about
16 it. Mr. Durkin --

17 BY MR. ORESKOVICH:

18 Q. Yeah.

19 A. -- um, was forceful about it. He insisted that I not have
02:09PM 20 any contact with the City any more, that I work only for the
21 FBI.

22 And I explained in that process, it doesn't work that
23 way. And he said, if I have to, I'll pull you before the Grand
24 Jury. And I said, well, if you need to do that, go ahead; but
25 I've been doing this -- that's when we talked about, I've been

1 doing this a long time and I know the process.

2 And some time after he, um, said he was going to pull
3 me in front Grand Jury if I didn't cooperate, which I was fully
4 there to cooperate, I suggested he makes the phone call.

5 Q. All right. So this occurred prior to the time that he made
6 the phone call to Mr. Craven?

7 A. Yes.

8 Q. All right.

9 I think that's -- in your original report, at some
02:10PM 10 point in time in the report you had some reference to Mr. Zehm
11 kicking at Mr. Thompson, is that fair to say?

12 A. My report very specifically said Mr. Zehm was kicking
13 upward toward Officer Thompson. Not kicking Officer Thompson.

14 Q. All right.

15 And did you have any discussion with the government at
16 any point in time as to whether or not that should be taken out
17 of any of your reports?

18 A. I was directed specifically to remove that from my report.

19 Q. And who directed you to remove it from the report?

02:11PM 20 A. Um, Mr. Durkin.

21 Q. All right. And was there a meeting that you had, not only
22 with Mr. Durkin concerning that issue, but also a Victor
23 Boutros?

24 A. Yes. Subsequent to that.

25 Q. Mr. Boutros was a co-counsel with Mr. Durkin in the

1 prosecution of this case?

2 A. That's my understanding.

3 Q. And did Mr. Boutros have any discussions with you about
4 removing the comment about Mr. Zehm kicking in the direction of
5 Mr. Thompson?

6 A. Um, that had already been done.

7 Q. Um-hum.

8 A. And he asked me how I would handle that in
9 cross-examination.

02:11PM 10 Q. Um-hum.

11 A. How I would handle the fact that, um, I removed that from
12 the subsequent document.

13 Q. Um-hum.

14 A. And I explained, you know, fairly easily, I'm not a human
15 factors expert, that my evidence was that he was kicking upward,
16 and that I can't state that it was actually an intentional
17 kicking motion. And that I was directed to remove it. And I
18 thought that was a pretty straightforward answer.

19 Q. Um-hum.

02:12PM 20 MR. ORESKOVICH: That's all I have. Thank you.

21 THE VIDEOGRAPHER: Should we change the tape here?

22 MR. DURKIN: Sure, why don't we do that. Why don't we
23 start back up at 2:30.

24 THE VIDEOGRAPHER: This will conclude tape number 2.
25 The time is 2:12 p.m.

1 (Break taken.)

2 THE VIDEOGRAPHER: This is the continued videotaped
3 deposition of Grant Fredericks and tape number three. The date
4 is March 2, 2012. The time is now 2:32 p.m.

5

6 EXAMINATION

7

8 BY MR. DURKIN:

9 Q. Okay. All right, Mr. Fredericks, we have had the pleasure
02:33PM 10 of meeting before, correct?

11 A. Yes.

12 Q. Okay.

13 How many times have you had your deposition taken?

14 A. Um, 12, 15 times.

15 Q. Okay.

16 And you previously indicated that you had testified in
17 a courtroom as a law enforcement officer, as I recall your
18 statement you described approximately a hundred times?

19 A. As law enforcement officer.

02:33PM 20 Q. Yes.

21 A. Many hundreds of times.

22 Q. Hundreds of times. Okay.

23 And then as a forensic video analyst approximately how
24 many times?

25 A. A hundred.

1 Q. Okay.

2 And in your prior, approximately 15 depositions that
3 you participated in, was it explained to you that you're under
4 oath just like you would be in a courtroom?

5 A. Yes.

6 Q. Okay.

7 And you understand the requirements of providing
8 testimony under oath?

9 A. I do.

02:34PM 10 Q. Okay.

11 Supposed to be your most truthful and accurate
12 testimony; is that correct?

13 A. Correct.

14 Q. Okay.

15 And this is just like testifying in front of the judge
16 at a hearing or in front of a jury, you understand that?

17 A. I understand that.

18 Q. Okay.

19 And your testimony here today can be used for a number
02:34PM 20 of purpose; do you understand that?

21 A. I do.

22 Q. Okay.

23 Because of that and because you are sworn in under
24 oath and because you are required to give your most truthful and
25 accurate response you are entitled to understand the question

1 that is posed to you, okay?

2 A. Yes.

3 Q. Okay.

4 And if for any reason you don't understand my
5 question, please tell me and I'll be happy to rephrase that
6 question.

7 A. Thank you.

8 Q. If you answer the question, can we presume that you
9 understand the question?

02:35PM 10 A. Yes.

11 Q. Okay.

12 And has all your testimony today so far been truthful
13 accurate and complete as you understand it?

14 A. Yes.

15 Q. Okay. And are you on any medications that would in any way
16 affect your ability to accurately recall events?

17 A. No.

18 Q. Okay. Is there any reason you're not feeling well today or
19 unable to provide accurate testimony?

02:35PM 20 A. No.

21 Q. What did you do to prepare for your testimony here today?

22 A. I, um, prepared the exhibit 7 by going through the Rule
23 16 --

24 Q. Okay.

25 A. -- document.

1 Q. And when did you start preparing that exhibit?

2 A. Within the past week.

3 Q. Okay.

4 And was that exhibit previously provided to your
5 counsel or to Mr. Oreskovich?

6 A. Um, I think two days ago I provided it to them.

7 Q. To Mr. Oreskovich and your counsel too?

8 A. Not to Mr. Oreskovich, pardon me, to Mr. Wetzel only.

9 Q. Okay. All right.

02:36PM 10 What else did you do to prepare for your testimony
11 here today?

12 A. I have reviewed, over the past few months, my written
13 reports, um, my e-mail communication --

14 Q. Okay.

15 A. -- and a number of the exhibits that I produced for the
16 government.

17 Q. All right. So you performed a file review.

18 A. I did.

19 Q. All right.

02:36PM 20 What else did you do in anticipation of your testimony
21 here today?

22 A. Since the time that I was notified of the deposition? I
23 think that what I've described is what I've done.

24 Q. Okay.

25 Was there other work that you did in anticipation of

1 having to appear in court relative to the issue that you brought
2 here today or have testified upon today?

3 A. No.

4 Q. Okay.

5 Who did you meet with in anticipation of your
6 testimony here today?

7 A. In anticipation of the testimony, nobody, apart from Mr.
8 Wetzel, this morning at 7 o'clock.

9 Q. Okay. Did you meet with anybody to prepare for your
02:37PM 10 testimony?

11 A. No.

12 Q. All right.

13 Is there anything else that you reviewed -- well, let
14 me back up.

15 Have you reviewed any other items in preparation for
16 your testimony here today?

17 A. In preparation for this testimony? No.

18 Q. Okay. You're qualifying it and I want to understand why
19 you're qualifying it.

02:37PM 20 A. Because I want to be sure you're asking in preparation for
21 this. There are a lot of documents that I reviewed over the
22 past five years.

23 Q. Okay.

24 A. Which all help me --

25 Q. Sure, I understand.

1 A. -- with my memory.

2 Q. Let's start with from November 2nd, which was the date of
3 the jury's verdict, until today, in terms of preparing either
4 the complaint that you filed, or excuse me, the concern that you
5 lodged with the Court, or in anticipation of testimony today.

6 A. Yes.

7 Q. I want to get a good understanding of what the universe of
8 information is that you reviewed and have relied upon to present
9 here today.

02:38PM 10 A. Okay. I understand your question. Thank you.

11 Um, um, after the conviction, I reviewed my documents.
12 I reviewed the Rule 16. Um, I, um, read, um, some news accounts
13 of the conviction. And I did some research, um, based on my
14 concern about the Rule 16, um, statements.

15 Q. Okay.

16 Your research. When you say "research," describe that
17 for me.

18 A. In the Spokesman Review.

19 Q. Okay.

02:39PM 20 A. Just to see some kind of history.

21 Q. So you went through media reports.

22 A. Correct, yeah.

23 Q. Okay. Anything else besides just reviewing media reports?

24 A. Yes. And I didn't really review the media reports, I was
25 aware that there was some documents filed by Department of

1 Justice that the media, um, was displaying. Including my
2 reports.

3 Um, and I was unaware of any of this up until the end
4 of November, early December.

5 Q. "Any of this," what are you talking about?

6 A. Any of the fact that the media had access to all this
7 information.

8 Q. Okay.

9 A. These are official reports filed to the Court. I located a
02:40PM 10 report, um, from the Department of Justice that outlined to the
11 Court, to the judge, I believe, um, its case, um, its
12 experiences with witnesses, including me.

13 And the report from the Department of Justice appeared
14 to state, to allege, that I had been providing evidence to the
15 defense --

16 Q. Okay.

17 A. -- that I had produced for the government.

18 Q. And is that report that you're talking about, let's be more
19 specific of what that is, do you have a recollection of what
02:40PM 20 that was?

21 A. I believe it was a report that was signed by you, Mr.
22 Durkin.

23 Q. Okay.

24 Was it called a proffer relative to attorney conflicts
25 and other pretrial motions?

1 A. It sounds familiar, but it was a very lengthy document that
2 had a lot of detail.

3 Q. Okay.

4 A. I didn't read the entire document.

5 Q. Okay.

6 A. I did word searches for my name.

7 Q. Sure.

8 A. And that's when I discovered that the Court had been led to
9 believe, inaccurately, that I had provided evidence to the
02:41PM 10 defense after I was hired by the Department of Justice. That
11 led, built my concern.

12 Q. Okay. Let's talk about that specific issue.

13 Well, let me go back and revisit. Is the signed
14 statement, also called the declaration in your examination here
15 today, dated March, or excuse me, December 16th, 2011, is that
16 truthful and accurate?

17 A. Yes.

18 Q. Okay.

19 Okay. Let's -- and in that signed statement, although
02:41PM 20 Mr. Oreskovich repeatedly had talked to you about a meeting on,
21 in March, can you tell me where in your signed statement you say
22 that there's a meeting in March where you met with Miss Jangaard
23 and myself and had these discussions that you've been talking
24 about all day.

25 A. On page four, paragraph three.

1 Q. Okay. Okay.

2 But in -- I'm talking about the discussions. Can you
3 point out where else in your report, your signed statement,
4 declaration, that you reference all of these conversations that
5 you have described for Mr. Oreskovich today?

6 A. As I explained to Mr. Oreskovich, I didn't take notes,
7 because that's not my practice.

8 MR. DURKIN: I'm going to move to strike.

9 BY MR. DURKIN:

02:42PM 10 Q. Do you understand my question? My question is --

11 A. Probably not.

12 Q. -- is where else in your signed statement that you said was
13 truthful and accurate do you reference conversations that you've
14 been talking about with Mr. Oreskovich today that you, that
15 occurred, allegedly occurred in March of 2007?

16 A. I didn't include that in this, in that document.

17 Q. Okay.

18 Now in March of -- let's talk about you providing
19 information to the defense.

02:43PM 20 You understand who Rocky Trepeddi is.

21 A. Yes.

22 Q. Okay.

23 Can you describe for me your understanding of him.

24 A. He's a City attorney.

25 Q. Okay.

1 And you've had dealings with him and interaction with
2 him.

3 A. Very few, but, yes.

4 Q. Okay.

5 A. Initially.

6 Q. Okay. And he represents the City of Spokane.

7 A. Correct.

8 Q. He represents the City Police Department?

9 A. That's my understanding.

02:43PM 10 Q. He represents the individual officers who have been alleged
11 to have engaged in misconduct in one form or another relative to
12 the Otto Zehm matter.

13 A. Well, I don't know if that's the case, I know he represents
14 the City and the police department, as such would be --

15 Q. Representing the officers.

16 A. Okay. I'll accept that.

17 Q. Okay. That was your understanding. Particularly in March
18 of 2007.

19 A. No.

02:44PM 20 Q. It wasn't your understanding?

21 A. No, I don't believe I had -- oh, in March of 2007.

22 Q. Yes.

23 A. My, um, um, well, I don't know what my understanding was
24 who Mr. Trepeddi was. He was certainly, he was simply the
25 person who I was to send my checks, my invoices to.

1 Q. Okay.

2 A. Um, it, I know he's a lawyer for the City, and I know that,
3 um, his job is, um, as a City lawyer, to assess liability and do
4 all those things.

5 Q. Okay.

6 A. I don't believe I dealt with him when I did my initial
7 report. I think that came afterwards.

8 Q. Okay.

9 A. To answer your question directly, um, you know, I don't
02:44PM 10 know what his specific function is, but if it's anything like
11 other cities I've worked for he's, his duty is to assess
12 liability. I'm not sure if that's accurate.

13 Q. Okay.

14 So that you knew that the person who was responsible
15 for assessing liability and defending the City and the City's
16 interest, correct?

17 A. Yes, absolutely, yes.

18 Q. You knew in March of 2007 that was his role.

19 MR. ORESKOVICH: I'm going to object to this as being
02:45PM 20 asked and answered.

21 BY MR. DURKIN:

22 Q. Go ahead.

23 A. I think so. Yeah, I believe that I was aware of that.

24 Q. And you knew that he worked with the Division of Risk
25 Management.

1 A. Yes.

2 Q. Because you knew in March of 2007 that your bill had been
3 paid by the Division of Risk Management.

4 A. I'm not sure who paid the bill. Um, initially I was told
5 that the City Police Department, because it's an investigation,
6 they would be paying for it, Trepeddi would authorize it or it
7 was being shared.

8 I don't know who came up with the money. I initially
9 at the end, at the end of the report I was turned over to
02:45PM 10 Mr. Trepeddi for payment. So I think I had three or four
11 dealings with him.

12 Q. Okay. And when you met with Miss Jangaard and I --

13 A. Yes.

14 Q. -- back in March of 2007, you were asked whether or not
15 there was an ongoing SPD investigation which you were
16 participating in. Do you recall that?

17 A. No, I don't recall that, but I was involved in an SPD
18 investigation in the Zehm matter.

19 Q. Okay. And you were asked whether or not there was anything
02:46PM 20 further to be done for them. Do you recall that?

21 A. Um, something like that, um-hum.

22 Q. Okay.

23 And do you recall telling us that there was nothing
24 further, you had no further engagement with them?

25 A. That's not correct. I was there at their request.

1 Q. I'm talking about the SPD.

2 A. Well I don't know.

3 Q. Okay.

4 A. You know, to me it's all one thing.

5 MR. DURKIN: I'm going to move to strike.

6

7 BY MR. DURKIN:

8 Q. You know, I get to ask the questions and you get to provide
9 the answers. That's the arrangement here. And if you want an
02:47PM 10 opportunity for further explanation, you can provide that when
11 Mr. Oreskovich examines you, okay?

12 A. I understand.

13 Q. Okay. And you've been through this drill 250 times at
14 least.

15 A. Yes.

16 MR. ORESKOVICH: Well --

17 BY MR. DURKIN:

18 Q. Okay. Did you disclose to Special Agent Jangaard and
19 myself in March of 2007 that you had a continuing relationship
02:47PM 20 with the City Attorney's Office?

21 A. Of course. They were my client.

22 Q. Okay. You disclosed that to Special Agent Jangaard and I
23 when you met with us.

24 A. Yes, absolutely. I said that I was here at the request of
25 the City.

1 Q. Okay.

2 A. That was --

3 Q. And did you --

4 A. -- abundantly clear.

5 Q. Let me ask the question.

6 And did you disclose to the FBI, DOJ, and my office
7 that the work that we had requested that you perform was going
8 to be disclosed to the City Attorney's Office?

9 A. Yes, in writing, I have the e-mails that you all were --

02:47PM 10 um --

11 Q. At the time --

12 A. -- copied on, yes.

13 Q. -- at the time that the request was made, not at the time
14 that the work was completed and you provided the work to
15 everybody, at the time the request was made, did you tell us
16 that you were going to provide copies of whatever you were doing
17 for the Department of Justice to the City Attorney's Office?

18 A. Absolutely.

19 Q. Okay.

02:48PM 20 A. And that's supported in the e-mails and the invoices.

21 Q. Okay.

22 And then in August of 2007, were you not confronted
23 about providing that information without the U.S. Attorney's
24 Office's knowledge and without the FBI's prior knowledge?

25 A. Absolutely not.

1 Q. You weren't.

2 A. No.

3 Q. Okay.

4 You talked about this conference call that was held at
5 the U.S. Attorney's Office in August of 2007.

6 A. Yes.

7 Q. Between the U.S. Attorney's Office and the City Attorney's
8 Office. Do you recall that?

9 A. Yes.

02:48PM 10 Q. Okay.

11 Aside from Special Agent Jangaard and myself, who else
12 was present for that conference call?

13 A. I'm not certain.

14 Q. Well, tell me what you do recall.

15 A. Um, I recall the three of us. Um, at some point the other
16 attorney from Washington, D.C. was in the meeting, on at least
17 two occasions, I don't recall which of the meetings.

18 Q. Okay. So you call Victor Boutros, the attorney from
19 Washington, D.C., being present for the March 2007 and the
02:49PM 20 August 2007 meetings?

21 A. I don't recall him in the March meeting, he may have been
22 there in the August meeting, I don't recall.

23 I think that -- I recall meeting him on at least two
24 occasions.

25 Q. And you recall he may have been present for this conference

1 call in August of 2007.

2 A. May have been.

3 Q. Okay.

4 Let's go back now to, since we haven't finished, what
5 other materials did you review from November 2nd to the present?

6 A. I think I've stated, my reports, um, a number of the
7 documents that I produced for your office.

8 Q. Okay. Meaning the exhibits?

9 A. Yes.

02:50PM 10 Q. Okay.

11 A. My e-mails. My invoices.

12 Q. Okay.

13 A. And I don't recall anything else.

14 Q. Okay.

15 Who all did you talk to about your concern?

16 A. Mr. Wetzel.

17 Q. Who else?

18 A. My wife.

19 Q. Okay. Who else?

02:50PM 20 A. Um, I have an attorney, um, in Canada I spoke with.

21 Q. Okay. Where in Canada?

22 A. Alberta.

23 Q. Okay. His name, her name?

24 A. Jonathan Hak.

25 Q. Who else?

1 A. I had a conversation with um, um, Mr. McGinnis, at the FBI,
2 when he confronted me about this a couple weeks ago, after --

3 Q. Okay. Who else?

4 A. Um, Mr. George Reese.

5 Q. Who?

6 A. George Reese.

7 Q. Who is that?

8 A. He's the person that you asked me about who knew Mr.
9 Schott.

02:51PM 10 Q. You mean at the -- is he out of California, is he with
11 LEVA?

12 A. Yeah, he's a peer that I often seek his advice.

13 Q. Okay. Who else?

14 A. He has, he has standing in a, um, an expert witness, um,
15 group, so I thought he would have good advice for me. I believe
16 that's it.

17 Q. Okay. That's all the people that you talked to?

18 A. Yes. Um, um, I reached out to another attorney here in
19 town before I talked to Mr. Wetzel.

02:51PM 20 Q. Who was that?

21 A. I don't recall.

22 Q. Okay.

23 A. I contacted a law firm, spoke to an attorney briefly, the
24 attorney said that they wouldn't be able to assist because, um,
25 they were your friend and, um, it wouldn't be appropriate, um,

1 so I moved on.

2 Q. Okay. Now earlier this morning you were asked how it was
3 that you came to see Mr. Wetzel. And you said, well I did some
4 research; and then you said, well I might have got some
5 additional information.

6 Did you refresh your recollection as to that
7 additional information?

8 A. No, I think I just found Mr. Wetzel and --

9 Q. Okay. You indicated maybe your attorney would have had
02:52PM 10 some information that might refresh your recollection.

11 A. He did not.

12 Q. Okay. Did you check with him?

13 A. Um-hum.

14 Q. Okay.

15 A. I asked if he remembered and he didn't know.

16 Q. So you were just fortunate enough to pick Mr. Wetzel out of
17 the, to get a very fine attorney out of, just out of the dark.

18 A. I agree.

19 Q. Okay.

02:53PM 20 Anybody else that you talked to -- either directly or
21 indirectly -- with, relative to your concerns? Let me back up.

22 Have we covered everybody that you talked with
23 directly?

24 A. Um, my employees. No, obviously, because they have been
25 involved in helping to assist in producing exhibits, so they're

1 aware of this.

2 Q. Okay. Sure.

3 And as I recall you have some employees that work at
4 the Spokane Police Department. Have used, maybe contractors
5 that work at the Spokane Police Department?

6 A. Oh, on one occasion several years ago Mike Lavelle came in
7 and did a few hours worth of work for me on a case. And Mike
8 Lavelle is a civilian who works in the Training Division for the
9 Spokane Police.

02:53PM 10 Q. Okay.

11 A. And I haven't talked to Mike in years and certainly never
12 talked to him about this case.

13 Q. Okay.

14 Anybody else with the Spokane Police Department that
15 you have done work for or work has done work for you?

16 A. No.

17 Q. Okay.

18 Have you spoken directly or indirectly with anybody
19 else, other than the people that you've already described?

02:54PM 20 A. No.

21 Q. Okay. And who are your current employees?

22 A. Um, um, I've got two employee. One's my son, Andrew
23 Fredericks, and Larry Compton.

24 Q. Okay. Mr. Compton's a former fellow law enforcement
25 officer?

1 A. He's a former peace officer from New York, yes.

2 Q. Okay. That's a law enforcement officer, would you agree?

3 A. Um, I don't know. It's a -- peace officers are different
4 from like police officers, in my understanding.

5 Q. Okay.

6 A. They handle documents, they don't go out and arrest people.

7 Q. All right. Okay.

8 Now you have previously provided testimony that the
9 mechanism for getting you involved in this case was a phone call
02:55PM 10 from Jack Driscoll; is that correct?

11 A. Yes.

12 Q. Okay.

13 That was the first time you had had contact on this
14 case relative to the Otto Zehm incident.

15 A. No, I received a phone call from the media after it
16 happened.

17 Q. Okay.

18 A. I didn't return the media's call. I spoke with, um, the
19 only person I knew from the Spokane Police at the time, um, I'm
02:55PM 20 sure you'll help refresh my memory. He's a video analyst at
21 Spokane Police, he's been in a couple of my classes.

22 Q. John McGregor?

23 A. Thank you. John McGregor, yes. I spoke with John about
24 it.

25 Q. Okay.

1 A. And it was basically left at that.

2 His partner, I was aware that his partner was a video
3 analyst who had just died and they were, um, I think John was
4 otherwise occupied.

5 Um, and then several weeks later, I think, or some
6 time later, Mr. Driscoll contacted me and I don't know if he was
7 aware that I knew Mr. McGregor or not.

8 Q. Okay.

9 So this phone call you had with Mr. McGregor, at least
02:56PM 10 the way that you're describing it, and you correct me if I'm
11 wrong, is you're describing it as he called you?

12 A. No, I called him.

13 Q. Okay. You called him.

14 A. After I got a call from the media. I didn't return the
15 media's call, I don't like getting involved in, in responding to
16 the media on cases.

17 Q. Okay.

18 A. Um, and I called John at that time.

19 Q. Okay.

02:56PM 20 A. And I believe that's in my reports.

21 Q. Okay.

22 And John had recently had a colleague of his pass away
23 and so he was otherwise occupied as opposed to dealing with the
24 case.

25 A. That's my recollection -- well, it's my recollection is

1 around that time period, yeah.

2 Q. Okay.

3 Now as I understand, we'll call it exhibit 1, your
4 statement, signed statement, and it's not signed under oath but
5 you've represented that that's all truthful and accurate; is
6 that right?

7 A. That's correct.

8 Q. Okay.

9 That was expressing concerns with a Rule 16 "summary"
02:57PM 10 that my office, specifically that I prepared, correct?

11 A. That's my understanding.

12 Q. Okay. And your concern, as I understand the way it was
13 articulated earlier, was, one, it did not reflect your actual
14 testimony or opinions.

15 A. Correct.

16 Q. And two, you had a concern that it had been shared and
17 relied upon by other experts or the Court or the defense.

18 A. Correct.

19 Q. Okay. Is that an accurate description?

02:58PM 20 A. Yes.

21 Q. Anything more to add to that generally?

22 A. No, I think that's it.

23 Q. And you were provided earlier today, during questioning by
24 Special Agent Jangaard, with dates of reports that were prepared
25 by other experts; do you recall that?

1 A. Yes.

2 Q. And those all well preceded the September 22nd, 2009,
3 summary that I prepared.

4 A. You know, the dates that I was provided for a report from
5 them is, precedes the Rule 16. I don't know what other evidence
6 they produced after that. Um, my concern still stands in that
7 regard.

8 Q. Okay.

9 And you're not familiar with the disclosures that were
02:58PM 10 made in this case --

11 A. I am not.

12 Q. -- obviously.

13 A. No, sir.

14 Q. Okay.

15 So if I told you that your first report was disclosed
16 to the defense, that would cover all of the concerns that you
17 expressed relative to the Rule 16 summary, wouldn't it?

18 A. No.

19 Q. Okay. What would it not cover?

02:58PM 20 A. The first report doesn't, um, doesn't say this.

21 Q. I know. It contradicts it. What I'm saying is that if
22 they were given that report, which is much more detailed than a
23 summary, you would agree with me, correct?

24 A. Um, this specifically goes --

25 MR. DURKIN: I'm going move to strike.

1 BY MR. DURKIN:

2 Q. Do you agree with me?

3 MR. ORESKOVICH: No, wait, wait, just a --

4 MR. DURKIN: Hold on. Let me make my questions.

5 MR. ORESKOVICH: Hold on --

6 MR. DURKIN: I'm withdrawing the question anyway, I'm
7 going to rephrase the question.

8 MR. ORESKOVICH: Okay.

9 BY MR. DURKIN:

02:59PM 10 Q. You would agree with me that a summary is not a specific
11 detailed report, for instance, anything close to what Exhibit
12 Number 7 is that you prepared for discussion here today.

13 A. It's not my belief that this is a summary, Mr. Durkin.

14 Q. What does the title of the document say? The Rule 16 --

15 A. Statement of Grant Fredericks Video Analyst.

16 Q. No, I'm talking about --

17 A. I'm sorry. I'm looking at the wrong document. Excuse me.
18 Verbatim Report of Proceedings -- that's the wrong one. Excuse
19 me. Let me get to the right one here.

03:00PM 20 What exhibit are we talking about here? Exhibit 2?

21 MR. ORESKOVICH: Exhibit Number 2.

22 THE WITNESS: Thank you. United States Addendum to
23 Notice of Expert Witness and Summary of Opinions.

24 BY MR. DURKIN:

25 Q. Okay. So you agree with me that's a summary.

1 A. Well, that's what it says it is. I don't agree that's what
2 it is, but that's what it says it is.

3 Q. Okay.

4 Do you know what Rule 16 provides?

5 A. Um, I'm not very familiar with Rule 16, um, apart from it
6 being a disclosure document that I've normally referred to it or
7 heard it referred to as a "will say."

8 My understanding is this is a presentation of what you
9 expect my evidence to be and what my opinion is.

03:01PM 10 Q. Okay.

11 If that was the case -- well let me back up.

12 You agree that it's described as a summary, correct?

13 A. It says summary, yes.

14 Q. Okay.

15 You would agree with me that it's not anything close
16 to the detail of the reports that you prepared.

17 A. It provides detail about unrelated issues.

18 Q. Okay.

19 You would agree with me that it doesn't provide the
03:01PM 20 detail of the testimony which was approximately an hour in front
21 Grand Jury that you provided, correct?

22 A. Again it focuses on different issues.

23 Q. Okay.

24 Are you saying that the summary focuses on different
25 issues or it just, some points focus on different issues within

1 those detailed reports?

2 A. The reports do not deal with the issues in the Rule 16.

3 Q. How about the Grand Jury testimony?

4 A. It doesn't deal with the same issues specifically, not all
5 the same issues. Some of them, they're referenced. What's
6 different from providing inaccurate detail in a summary
7 document, about, um, another document that doesn't touch on
8 those issues and to say that it's the same thing. It's not.

9 Q. Okay.

03:02PM 10 Would you agree with me that if you were providing
11 testimony you would be providing testimony based on the detailed
12 report you provided as opposed to a summary?

13 A. Um, I would be providing testimony, the foundation of which
14 would be my reports and my exhibits, but I would be providing
15 testimony on any questions put to me.

16 Q. Okay.

17 And they would be certainly longer than the
18 approximately two pages provided in the summary; would you
19 agree?

03:02PM 20 A. Mr. Durkin, absolutely. If I provided testimony, I don't
21 think this would have been a problem.

22 Q. Okay. All right.

23 MR. ORESKOVICH: You say "this," sir, are you
24 referring to the Rule 16? What exhibit?

25 THE WITNESS: Rule, I'm sorry, exhibit 2, Rule 16, had

1 I provided testimony, I would not be here today because I
2 wouldn't have the concerns that, I'm sure that this would have
3 been dealt with, these issues, any miscommunication, any
4 misinterpretation of my opinion, would have been excised from my
5 testimony.

6

7 BY MR. DURKIN:

8 Q. Okay.

9 And you previously testified that a copy of this

03:03PM 10 summary was provided to you by my office, correct?

11 A. Yes.

12 Q. And approximately in September of 2009.

13 A. Yes.

14 Q. Okay.

15 And on page four, Mr. Fredericks, I'll direct your
16 attention to the last paragraph. It says, "United States and
17 Mr. Fredericks reserve the right to supplement, modify, or
18 change his findings or opinions as more information becomes
19 available in this case and discovery progresses." Are you

03:04PM 20 looking at exhibit 2, page four?

21 A. Yeah. Line four?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. You read that.

25 A. Yes.

1 Q. Okay.

2 Now you previously provided testimony in response to
3 Mr. Oreskovich's questions that you felt that it was a constant
4 friction, if you will, between what you expected your testimony
5 to be or what you felt your opinions were, and what the theory
6 or the discussions that the United States Attorney's Office had
7 with you, specifically you were talking about me, correct?

8 A. Yes. Yes, sir.

9 Q. Okay.

03:04PM 10 And you were given an opportunity to write a
11 supplemental report, correct?

12 A. Yes.

13 Q. That was requested from you. Yes?

14 A. Yes.

15 Q. Okay. And did I have any control over what you wrote in
16 that report?

17 A. Yes, you did.

18 Q. Okay. Relative to what?

19 A. You directed me to remove content, to eliminate content,
03:05PM 20 and to focus my report more specifically on Officer Thompson and
21 not on the other issues.

22 Q. Okay. Now, this was a supplemental report, correct?

23 A. Correct, sir.

24 Q. Okay.

25 And so in terms of your supplement, the issues that

1 you claimed I told you to remove, they were already in your
2 prior report, correct?

3 A. That I claim? That you did tell me to remove, yes. They
4 were in the report.

5 Q. They were in your prior report, correct?

6 A. Correct.

7 Q. Okay.

8 A. Yes.

9 Q. So if they're in a prior report, and I'm asking for a
03:05PM 10 supplemental report, why would they be re-included in the
11 supplemental report?

12 A. I was just following your direction.

13 Q. Okay.

14 A. I don't know what the purpose of it was, except --

15 Q. Okay.

16 A. -- to, you explained it to me, was to allow another
17 expert --

18 Q. Okay.

19 A. -- a human factors person, to deal with issues of kicking,
03:05PM 20 um, and whatever other issues were in there.

21 Q. And you agreed with that.

22 A. I, I certainly understood the logic behind it.

23 Q. Okay. You agreed with it. You agreed to do that.

24 A. I agreed to do it, yes, at your direction, of course.

25 Q. Okay.

1 And in fact, um, you were deferring to Doctor Richard
2 Gill, correct?

3 A. Correct.

4 Q. Who is an expert in human factors.

5 A. It's my understanding.

6 Q. Okay. He's an expert in photogrammetrics.

7 A. I don't know.

8 Q. Okay. You're not an expert in human factors, correct?

9 A. I am not.

03:06PM 10 Q. You you're not an expert in biomechanics.

11 A. I am not.

12 Q. You're not an expert in photogrammetrics.

13 A. Um, part of it I am, yes.

14 Q. Okay.

15 A. But not -- photogrammetry has many different, um --

16 Q. Disciplines across the board.

17 A. Yes. Yes. So when you say, you're not an expert in
18 photogrammetry, that's incorrect.

19 Q. Okay.

03:06PM 20 But you're not an expert or somebody whose been
21 trained and has a, as part of their engineering degree, in
22 photogrammetrics?

23 A. Correct, I am not.

24 Q. Okay.

25 Now, let's go back and talk about this, according to

1 you, it was the August 7th, August 3rd meeting, correct? Where
2 we had all these significant discussions according to exhibit 1?

3 A. I believe that was the date, yes.

4 Q. Okay. You had previously been requested to prepare stills
5 of each of the frames of the videotape, correct?

6 A. Yes.

7 Q. And when we met with you, "we" meaning Special Agent Lisa
8 Jangaard and I, we took your initial report and we compared it
9 to the video that we had at the time, the Open Eye proprietary
03:07PM 10 video, and we went through it and we pointed out to you
11 locations where the baton can be seen in the first minute and 13
12 seconds of Officer Thompson's engagement with Mr. Zehm, correct?

13 MR. ORESKOVICH: Just a moment. Before you answer
14 that question. I want to lodge an objection. To the extent of
15 counsel testifying as to what he did and asking questions about
16 it. Go ahead and answer.

17 BY MR. DURKIN:

18 Q. Go ahead, Mr. Fredericks.

19 A. Um, we looked at the image at 18:26:15 and 18:26:16.

03:08PM 20 Q. We also looked at images where you say is the first viewing
21 where you can see Officer Thompson deliver a baton strike that
22 appears to impact Mr. Zehm. Two additional strikes that, in
23 front of the kiosk.

24 A. Those are all in my report, yes.

25 Q. Okay. In your second report. They're not in your first

1 report, are they?

2 A. Yeah, they're in my first report. Page nine.

3 Q. Okay.

4 I'm going to hand you what's been marked as
5 government's exhibit number 2. And there's an Observation
6 Summary.

7 (Handing document to counsel.)

8 MR. ORESKOVICH: Thank you.

9 BY MR. DURKIN:

03:09PM 10 Q. And in that Observation Summary, based on your review of
11 the videotape, Officer Thompson does not use his baton on Zehm
12 until approximately 1 minute 13 seconds after the engagement.
13 Is that correct?

14 A. That's correct.

15 Q. Okay. That would be inaccurate, correct?

16 A. As I said --

17 Q. It's a simple question, Mr. Fredericks. That would be an
18 inaccurate description.

19 A. Please repeat your question. So I understand it.

03:09PM 20 Q. The Observation Summary saying that you did not observe the
21 videotape evidence of Officer Thompson using his baton during
22 his engagement with Mr. Zehm during the first minute and 13
23 seconds.

24 A. It is, um, articulated on page nine that I believe --

25 Q. That's not my question.

1 A. -- I believe that the contact was made with the baton. Um,
2 there are earlier images of a baton. I didn't recall, and we
3 discussed this at the time, at 18:26:37 and 18:26:38, those,
4 there were two swinging motions that are not in my report, six
5 months after I completed my report, at the time I didn't recall
6 and don't recall to this day whether I observed those, noted
7 them, but they were not -- um, those, those images as I said,
8 um, don't show contact. They show the baton in a swinging
9 motion.

03:10PM 10 So at the time I did not recall whether or not I saw
11 them six months later, they're not in my report, my report deals
12 with contact with the baton.

13 Q. And it actually deals with use of the baton, doesn't it?

14 A. It deals with the use leading up to it under, on camera
15 two.

16 Q. Okay.

17 My question back to you again, sir, is, a description
18 that the baton was not used during Officer Thompson's engagement
19 with Mr. Zehm during the first minute -- you keep it, please --
03:11PM 20 13 seconds is an inaccurate description.

21 A. I agree that it's inaccurate.

22 Q. Okay.

23 And that's one of the things we talked about with you
24 in, when we met with you, isn't it?

25 A. Absolutely. And at the time I said I don't recall whether

1 I saw those or not and that I don't see contact. And my goal
2 was to articulate contact. So if use of the baton, um --

3 Q. Wasn't your goal -- let me back up.

4 A. Well --

5 MR. ORESKOVICH: Just a moment. Let him finish his
6 answer.

7 MR. DURKIN: Well I'm going move to strike the
8 remainder of it.

9 MR. ORESKOVICH: Well, let him finish it though,
03:12PM 10 please, so we have it in the record.

11 MR. DURKIN: I'll move to strike. Go ahead.

12 THE WITNESS: If use of the baton means pulling it
13 out, holding it a certain way and moving around corners, then he
14 used it, you know, within the first few steps of him coming in.

15 If use of a baton means connecting with the baton,
16 then that didn't, my report is correct.

17 If use of the baton means possible, swinging or
18 possible swinging, then it's inaccurate.

19 BY MR. DURKIN:

03:13PM 20 Q. Where is that, where is that distinction articulated in
21 your report?

22 A. Which distinction?

23 Q. The one you just described.

24 A. Sir, no, I don't know what the distinction of use is
25 depending upon how you are using the word "use."

1 Q. Well I'm asking you. I mean you're saying he did not use
2 it.

3 A. No, no. I -- perhaps I'm not being clear enough and --

4 Q. Well I think you are.

5 A. -- I apologize.

6 Q. I think you are. I'm just saying -- well let's back up.
7 You've already acknowledged that it was inaccurate, correct?

8 A. Depends on your use of the term "use."

9 Q. Okay.

03:13PM 10 A. He used the baton the minute he pulled it out of his duty
11 belt.

12 Q. Okay.

13 A. Then it would be incorrect, my assessment would be
14 incorrect, because the baton was in use as a preventative
15 weapon, it was in use as a visual force tool. So that was yes,
16 use.

17 If use means contact, then my report is accurate.

18 MR. DURKIN: Okay. I'm going to move to strike, but
19 your answer stands.

03:14PM 20 BY MR. DURKIN:

21 Q. Now, your testimony, according to your statement, according
22 to your Grand Jury testimony, is that indeed there was a baton
23 strike with likely impact to Mr. Zehm at 18:26:37. Correct?

24 A. No.

25 Q. That's not your testimony?

1 A. No.

2 Q. That's not your prior testimony to Mr. Oreskovich a little
3 bit ago?

4 A. I'm sorry, give me the time again. I thought you said a
5 different time.

6 Q. 18:26:37.

7 A. 18, yes, 18:26:37 there is a motion of a baton that may
8 have been a strike, we don't, I can't say whether or not contact
9 was made.

03:14PM 10 Q. Okay. You --

11 A. Immediately following that, 18:26:38, there's another
12 motion of the baton, appears to be a striking motion, I can't
13 say whether or not there was contact.

14 Q. Okay.

15 A. Thank you.

16 Q. And I recall your earlier testimony as saying impact was
17 likely.

18 A. Um, I would, um, I would agree with that.

19 Q. Okay.

03:15PM 20 A. Yes.

21 Q. Okay. And that wasn't contained in your first report
22 either, was it?

23 A. No, because it wouldn't be my opinion that contact was
24 made, as opposed to my report on page nine, my opinion was
25 contact was made.

1 Q. But that wasn't until the center aisle at 18:27, excuse me,
2 18:25.

3 A. I think it was 18:27:29.

4 Q. Okay. If we're using the Zip Trip time.

5 A. Yes.

6 Q. Two minutes and three seconds difference, correct?

7 A. Yes. From my report, just to be clear, I was attempting to
8 use the standard time from the police dispatch.

9 Q. Right.

03:15PM 10 A. But it's easier to use the Zip Trip time.

11 Q. Absolutely.

12 So my point is, once again, your prior testimony just
13 shortly, moments ago, that at 18:26:37 and 38 there was a baton
14 strike likely resulting in impact, that was not described in
15 your first report, was it?

16 A. No, sir, see --

17 Q. That's -- it's a simple yes or no question, Mr. Fredericks.

18 A. The answer is no, because you are saying there was a baton
19 strike. And I'm saying there's a baton swinging motion.

03:16PM 20 Q. Okay.

21 A. That's the difference and I hope we can appreciate --

22 Q. Well and that's part of the problem I think here --

23 MR. ORESKOVICH: Just, just a moment.

24 MR. DURKIN: Hold on. Let me ask a question.

25 MR. ORESKOVICH: Hang on. I think you got to allow

1 him to finish his answer and then you can question, move to
2 strike, do whatever you want. But cutting him off, I'm going to
3 object to as being inappropriate.

4 MR. DURKIN: I will move to strike.

5 BY MR. DURKIN:

6 Q. I took down notes earlier, and you provided a couple of
7 responses to Mr. Oreskovich.

8 Baton strike, to you, was the equivalent of a baton
9 swing.

03:17PM 10 A. Our agreement --

11 Q. No, no, I'm not talking about our agreement. I'm talking
12 about baton strike as it was used. That term.

13 A. Where?

14 Q. In your report, in your Grand Jury testimony, is the
15 swinging of a baton.

16 A. Yeah. Yes. Because there's only one place that I would
17 say it is my opinion Officer Thompson connected with a strike to
18 the body with a baton.

19 So any other place we use baton strike we are
03:17PM 20 referring to a striking motion or a motion of the baton.
21 Swinging motion.

22 So there's one area where I will agree that strike
23 means contact. And --

24 Q. Maybe I'm wrong, I thought I heard you say that there were
25 three areas. One on page nine of your first report, then the

1 other two 18:26:37 and 38.

2 A. No, I said that's not my opinion, it's possible, but it's
3 not my opinion.

4 Q. Okay. You said it was likely, is that --

5 A. In fact, I agree that it was likely.

6 Q. Okay.

7 A. But that is different from, it is my opinion there was.

8 Q. Okay. Well, let's, maybe we're --

9 A. And this is after my concerns. I'm not dealing with, in my
03:18PM 10 part 16, it doesn't deal, or the Rule 16, doesn't deal with all
11 of this.

12 Q. I understand. I'm not talking about your, specifically
13 your concerns, I'm talking about when we first met and the
14 inaccuracies in that first report that you had. Do you
15 understand?

16 A. Well I understand what your position is on that, yes.

17 Q. Well it's not my position, that's what I'm questioning you
18 on, okay?

19 At the time that you met with Special Agent Jangaard
03:18PM 20 and myself, we also went through other areas and we asked you to
21 describe areas, for instance, where you determined Zehm had
22 kicked at Mr. Thompson. And you agreed, as you testified here
23 today, you couldn't conclude that he kicked at Mr. Thompson.

24 A. No, my report says he kicked upward toward Officer
25 Thompson.

1 Q. Okay.

2 You also said that he had had his arm extended in a
3 punching manner. And we asked you to take us through the stills
4 to show us where that had occurred. Do you recall that?

5 A. No. Can you refresh my memory? Whereabouts?

6 Q. One moment, please. Okay. I'll come back to it.

7 Mr. Fredericks, would you agree that you clearly infer
8 in your first report that Mr. Thompson does not use his baton in
9 his struggle with Mr. Zehm for the first minute and 13 seconds?

03:20PM 10 A. I agree.

11 Q. And that's an inaccurate description.

12 A. Um, I would agree if, if use means using the baton in a
13 swinging motion, then, yes, it is inaccurate. It missed those
14 first two or didn't include those first two.

15 Q. Okay.

16 A. I'm sorry, the --

17 Q. And the summary didn't include the second two either, did
18 it?

19 A. I'm sorry?

03:20PM 20 Q. The Summary Observation didn't include the second two
21 either, did it?

22 A. No, no, no. I'm talking about the first two being --

23 Q. 37 and 38?

24 A. 18:37, 18:38.

25 Q. Okay.

1 A. The summary did not include when I said that he did not use
2 his baton. If use means in a swinging motion, it is not
3 included in my report.

4 Q. Okay.

5 A. If -- and therefore it would be inaccurate if you want to
6 infer that I meant any time he used his baton as a potential
7 weapon.

8 Q. Okay.

9 A. Apart from holding it overhead being a use of force weapon,
03:21PM 10 but not applying it. So it's terminology, um, but those first
11 two motions that I can see on the video at 18:26:37 and 18:26:38
12 are not included in my initial report.

13 Q. Okay.

14 If we peer reviewed that first report with someone,
15 would they be critical of the evaluation that you performed and
16 the assessment?

17 MR. ORESKOVICH: Objection. Hang on. Objection to
18 the question as calling for speculation. You may answer.

19 THE WITNESS: I don't know.

03:22PM 20 BY MR. DURKIN:

21 Q. You don't know? Now, you've had an opportunity to review
22 the FBI 302 that Special Agent Jangaard prepared, correct?

23 A. Exhibit 5?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. Is that accurate?

2 A. No.

3 Q. Okay. What parts are not accurate?

4 A. I don't know what it means by, "Mr. Fredericks has not
5 testified on behalf of a plaintiff in a criminal matter, a
6 criminal proceedings." I don't know what that means.

7 Q. Okay.

8 Have you ever testified against a law enforcement
9 officer before --

03:23PM 10 A. Yes.

11 Q. -- this case?

12 A. Yes. Um-hum.

13 Q. In a criminal proceeding?

14 A. Um, yeah, before this case, yes.

15 Q. Okay.

16 Actually provided testimony at the time of trial
17 against a law enforcement officer.

18 A. Yes.

19 Q. Okay. What case was that?

03:23PM 20 A. Seattle case.

21 Q. That was actually a trial?

22 A. Yes, it was at trial. It was a, um, a drug case where the
23 officer's credibility --

24 Q. The one where Patterson, the Director of the Office of
25 Professional Accountability for the City of Seattle Police

1 Department prepared a report following the case and the
2 complaint?

3 A. I don't know. Patterson?

4 Q. Do you recall meeting with the Director of the Office of
5 Professional Accountability for the Seattle Police Department?

6 A. No. I met with an investigator about two weeks ago from
7 Seattle, when I taught my class in Quantico, who was part of
8 that panel. Who said he had fully agreed with me on that case.
9 Is that who you're referring to? Is that, I don't think that's
03:24PM 10 Patterson though.

11 Q. Okay.

12 Okay. Was -- let me back up.

13 Did you take any notes from these meetings?

14 A. No.

15 Q. Okay.

16 And when you prepared your stills, as part of your
17 process do you prepare notes, observation notes on the material?

18 A. If they're annotated into the stills, yes.

19 Q. Okay. And at the time you processed these stills, did you
03:24PM 20 make notes?

21 A. On some of the exhibits that I provided, I provided
22 annotated observations.

23 Q. Okay.

24 I'm talking about during the course. I mean, I read a
25 number of, a number of things prepared by LEVA, proper

1 acquisition of digital evidence. Proper, um, best practices for
2 establishing the securing and evaluation of digital evidence.

3 A. Best practice is for the acquisition, yes.

4 Q. Okay.

5 A. I didn't do any acquisition of video evidence in this case.

6 Q. Okay. But it talks about how to handle the evidence, how
7 to process it; and it also talks about when one is processing
8 that evidence and the preparation of notes, correct?

9 A. Um, very likely, you know, we deal with, when you go to a
03:25PM 10 crime scene and you recover data, you got to take photographs
11 and notes, yes, that's what that document deals with.

12 Q. Okay.

13 Anything -- what else in terms of that you take issue
14 with relative to Special Agent Jangaard's preparation of that
15 FBI 302 dated from the March 8th, 2007 meeting?

16 (Witness reviewed 302.)

17 (Witness reviewed exhibit 3.)

18 A. The fourth paragraph.

19 Q. Page one, two?

03:27PM 20 A. Page two. Fourth paragraph.

21 I provided an observation summary, again to your
22 observation that a summary is not a full detail, that states,
23 um, that the moment officer one attempted to arrest Zehm, Zehm
24 removed a 32 ounce soda bottle from the shelf and held it with
25 his right hand above his head as he backed away.

1 Um, and, and it's detailed in my reports as to the
2 exact circumstances and timing, and it's summarized here. You
3 took issue with the specificity of the sentence. And that's,
4 um, I think, just kind of mischaracterized a bit in here. So --

5 Q. So slightly mischaracterized?

6 A. Yeah.

7 Q. Okay.

8 So you're telling me that the summary isn't matching
9 up to the detail in the report, correct?

03:28PM 10 A. A summary's a summary, yeah.

11 Q. So, like mine, a Rule 16 summary is a summary and it
12 doesn't quite match up to the detail with your other opinions,
13 correct?

14 A. The difference between your summary is that it's completely
15 inaccurate and fabricated.

16 Q. Okay.

17 A. This is a summary of fact.

18 Q. Okay.

19 A. That's the difference between a summary, Mr. Durkin, and a
03:28PM 20 report.

21 Q. Okay.

22 And in terms of, you would agree with me that your own
23 summary was inaccurate back in September of 2006, the one that
24 was provided to the Spokane Police Department.

25 A. No.

1 Q. On page 17.

2 A. No, it's a summary of details that are articulated in the
3 same document and referenced in that document.

4 Q. Okay.

5 So you take issue with paragraph four on page two.
6 What else, if anything?

7 A. Um, paragraph three. Um, my report details that Mr. Zehm
8 looked north toward a police vehicle and, um, again an issue is
9 raised and I agreed to change my initial or my supplemental
03:30PM 10 report to say he looked north and the police vehicle was coming
11 from the north.

12 Q. Okay.

13 The inference to be drawn that, from your prior
14 report, that Zehm looked and saw the vehicle.

15 A. Well that wasn't my intent. He looked north toward the
16 vehicle, um, it wasn't my intent to say that he, it wasn't my
17 opinion that he saw the vehicle.

18 Q. Okay.

19 A. Um, it's a --

03:30PM 20 Q. So is paragraph three inaccurate or is it accurate?

21 A. Um, just odd. It's accurate. It's odd. And I -- and to,
22 to be specific --

23 Q. Okay.

24 A. -- I have no problem with saying, he looked north and the
25 police vehicle was in the north. And I don't have a problem

1 with that.

2 Q. Okay.

3 A. I just thought it was odd that it was a point in here.

4 Q. All right. I'm looking for inaccuracies.

5 A. Okay.

6 Q. Material inaccuracies.

7 A. The next paragraph, five.

8 My report says that Mr. Zehm was kicking up at the
9 officer with both feet while he lay on the ground on his back.

03:31PM 10 And then it says, "When asked to show the specific
11 video frames depicting this activity, Fredericks was unable to
12 do that at the time of the interview." And I just don't accept
13 that.

14 Q. You don't accept that or you don't recall it?

15 A. I don't accept it.

16 Q. Why don't you accept it?

17 A. It's in my report. And the image of him of his feet in the
18 air are in my report.

19 Q. Okay.

03:31PM 20 A. On that very page where that sentence is.

21 Q. But you described it earlier as kicking in the direction,
22 not at the officer. And your report says kicking at the
23 officer.

24 A. Let me look at it, please. Okay. Well, again, that's the
25 summary.

1 Q. Okay.

2 A. Okay. That's --

3 Q. Well, so let's talk about that then.

4 Because you said that the summary doesn't match up
5 with the detail, but the summary's misleading and inaccurate.

6 The report you prepared, you represented to the Court
7 in your statement was complete and thorough, this first report.

8 MR. ORESKOVICH: I'm going to object to the nature of
9 that question as being --

03:32PM 10 BY MR. DURKIN:

11 Q. Is that an accurate description?

12 MR. ORESKOVICH: Wait a second, Mr. Durkin. All
13 right. Are you done with your question?

14 MR. DURKIN: I am.

15 MR. ORESKOVICH: All right. Now let me state my
16 objection.

17 It's a compound question and mischaracterizes the
18 testimony. You may answer.

19 MR. DURKIN: Go --

03:32PM 20 THE WITNESS: The source of the comment is page eight.
21 Where it says --

22 MR. DURKIN: I'm going to move to strike. That's not
23 my question.

24 THE WITNESS: I didn't -- okay. I -- would you please
25 repeat your question.

1 BY MR. DURKIN:

2 Q. You represented to the judge in this case in your statement
3 and declaration, that you've said was accurate, that you did a
4 complete and thorough report for the Spokane Police Department
5 in September of 2006. Right?

6 A. Yes. Yes.

7 Q. And these reports are important, are they not?

8 A. They are.

9 Q. They're given to law enforcement officers as part of their
03:33PM 10 investigation, correct?

11 A. That's correct.

12 Q. And ultimately ends up in the hands of a prosecutor,
13 doesn't it?

14 A. That's correct.

15 Q. Okay.

16 And so charging determinations, one way or the other,
17 turn upon the accuracy of the information contained in this
18 report, correct?

19 A. Yes.

03:33PM 20 Q. Including the summary.

21 A. Yes.

22 Q. Okay. Okay.

23 MR. DURKIN: I think we are ready to change a tape.
24 We'll take a break.

25 THE VIDEOGRAPHER: This will conclude tape number 3.

1 The time is now 3:33 p.m.

2 (Break taken.)

3 THE VIDEOGRAPHER: This is the continued videotape
4 deposition of Grant Fredericks and tape number four. The date
5 is March 2, 2012. The time is now 3:42 p.m.

6

7 BY MR. DURKIN:

8 Q. Okay. Mr. Fredericks we've been talking about the 302
9 report that Special Agent Jangaard prepared. We were talking
03:42PM 10 about paragraphs that you took issue with in terms of material
11 accuracy. And we're on page two.

12 Anything further? And let me confirm: You've seen
13 this before, correct?

14 A. Yes.

15 Q. Yes?

16 A. Yes.

17 (Witness reviewed document.)

18 Q. Now you're on page three. I know you were questioned
19 earlier by Mr. Oreskovich relative to that and you had indicated
03:43PM 20 that had been accurate.

21 MR. ORESKOVICH: I'm going to object to that as being
22 an incorrect representation. You may answer.

23 MR. DURKIN: Or let me rephrase.

24 BY MR. DURKIN:

25 Q. That you wouldn't take issue with the description provided

1 by Special Agent Jangaard.

2 A. Please let me review it, so I can be --

3 Q. Go ahead.

4 A. -- be clear with the answer.

5 (Witness reviewed document.)

6 First sentence on the second paragraph I disagreed
7 with and continue to disagree with.

8 Q. On page three?

9 A. Yeah. Yes.

03:44PM 10 Q. That second paragraph?

11 A. Yeah. First sentence, second paragraph, yes.

12 Q. Okay. Anything else?

13 A. I do not agree that they were consistent with a baton
14 strike. I agree they were consistent with a swinging motion.

15 Q. Well --

16 A. They could be --

17 Q. Okay.

18 A. Not they, one image at, um, 18:26:14 could be consistent
19 with a swinging motion.

03:45PM 20 Q. Okay. And as we talked about before, swinging motion,
21 baton strike?

22 A. No, I don't agree with that. I believe that your intent
23 with the word baton strike is to indicate contact. I disagree
24 with that.

25 If you, if you will accept that baton strike doesn't

1 mean contact, then I'll be fine with that.

2 Q. Well that's what we've been operating under ever since we,
3 you and I had that dialog about a half hour ago.

4 A. Well, I just, I don't think that the wording is intuitive
5 that way. I think it leads the reader to believe that there was
6 contact.

7 And certainly I did not agree that he was using it in
8 a forward striking motion, because I could not see a baton.

9 Q. Was he backing up at the time when the, when you saw the
10 motions?

03:46PM

11 A. Was who backing up?

12 Q. Officer Thompson.

13 A. Um, no.

14 Q. Was he standing still when you saw the motion?

15 A. No.

16 Q. He was moving forward, correct?

17 A. He was moving forward, correct.

18 Q. So would that be consistent with a forward moving motion,
19 with baton motion?

03:46PM

20 A. I don't believe that's what this means.

21 Q. Okay.

22 A. So I disagree with what I believe the meaning of this to
23 be.

24 Q. You're interpreting, as written by Special Agent Jangaard,
25 that a strike meant impact; is that what you're saying?

1 A. Yes. A forward that is consistent with a baton in a
2 forward motion, in a forward striking motion on at least two
3 occasions --

4 Q. Okay.

5 A. -- prior. I disagree with that.

6 Q. You disagree with, just so I get this clear, you're
7 disagreeing with the description of forward striking motion
8 because you feel that describes an impact.

9 A. Um, I believe that this is misleading.

03:47PM 10 Q. Okay.

11 A. And I tried to be clear that my testimony was only that a
12 baton could not be seen, but that the, that one motion at
13 18:26:14 could be consistent with a swinging motion.

14 Q. Okay.

15 A. Okay. But not the subsequent images that we have here.

16 Q. All right.

17 A. And in fact I was very specific that there's no evidence of
18 motion with the baton because there's no motion blur. He could
19 just as easily be holding the baton as he's moving forward.

03:48PM 20 Q. Okay.

21 A. So I disagree with that.

22 Q. Okay. Well let's talk a little bit about that.

23 18:26:15. Where you see the baton, as you described
24 it, vertical above his, Officer Thompson's head and parallel to
25 the floor, correct?

1 A. One moment, please. No. That's at 18:26:16.

2 Q. Excuse me. 18:26:16:1?

3 A. 2.

4 Q. Okay.

5 MR. ORESKOVICH: Could I stop for one second. You
6 just moved this on the screen, and for the Court's reference to
7 follow this, would you just tell us what page number of exhibits
8 that is.

9 THE WITNESS: I understand the question --

03:49PM 10 MR. DURKIN: It's 128.

11 MR. ORESKOVICH: All right. Fair enough. Just get it
12 on the record.

13 BY MR. DURKIN:

14 Q. Okay. There's -- did you believe there was a question
15 before you?

16 A. I thought Mr. Oreskovich asked a question, but you answered
17 it, thank you.

18 Q. Okay. All right.

19 Specifically, 18:26:16, we see a baton at a raised
03:49PM 20 level, correct?

21 A. Parallel to the floor.

22 Q. Parallel to the floor, above the head.

23 A. Correct.

24 Q. Okay.

25 And we don't see it in the previous still, do we?

1 A. Correct.

2 Q. We see Officer Thompson in the previous still moving
3 forward, correct? Continued motion from the prior stills.

4 A. Yes.

5 Q. Correct?

6 A. Correct.

7 Q. And then we see Officer Thompson move forward again from
8 that still, 18:26:16, forward, correct?

9 A. Um, I would, yes, he disappears from view. Moving forward.

03:49PM 10 Q. Okay. So does the baton.

11 A. The baton is not in view.

12 Q. Okay. So it disappears from view.

13 A. Disappears from view.

14 Q. Okay. All right.

15 And in all of this discussion, this discussion that we
16 have had today and this issue with the description of your
17 opinion and everything else, that's relative to what's captured
18 on the video, correct?

19 A. Correct.

03:50PM 20 Q. Okay.

21 It doesn't talk about the other evidence that is out
22 there, right? For instance, witnesses?

23 A. Absolutely.

24 Q. Officer Thompson's own statement.

25 A. Correct.

1 Q. Okay.

2 A. Yes.

3 Q. And those would be evidence likewise, correct?

4 A. Correct.

5 Q. Okay.

6 And so if there was a statement by Officer Thompson
7 that he came in and engaged Mr. Zehm and that at approximately
8 18:26:14 he delivered his first baton strike, that motion that
9 you described would be consistent with that, with his own
03:50PM 10 description, correct?

11 MR. ORESKOVICH: Objection, for a moment. Let me just
12 state, I object to the nature of the question, the
13 characteristics of Thompson's statement, and the affect of. It
14 you may answer.

15 BY MR. DURKIN:

16 Q. Go ahead.

17 A. We agreed --

18 Q. No, no, no. That's not my question.

19 A. I believe it is your question.

03:51PM 20 Q. Please read back the question. Please read back the
21 question for me. It's a simple yes or no question.

22 (Last question read back.)

23 MR. ORESKOVICH: Same objection for the record. Go
24 ahead.

25 THE WITNESS: If Officer Thompson said he, he struck

1 with the baton at that time, the image at 18:26:14 would be
2 consistent with that, yes.

3 BY MR. DURKIN:

4 Q. Okay.

5 And so all of this dialog we had about exculpatory
6 evidence, what you're describing then would not be exculpatory,
7 your concerns would not be exculpatory, would they, because they
8 have been confirmed by Officer Thompson himself.

9 A. You know, my point is that's Officer Thompson's evidence
03:52PM 10 and it's not my evidence. And you purported that to be my
11 evidence and that's what I'm trying to clear up.

12 Q. Okay.

13 You would agree with me, because you have an
14 understanding of Brady evidence, correct?

15 A. Correct, yes.

16 Q. And that's exculpatory evidence, correct?

17 A. Correct.

18 Q. And then when in comparison with your concerns about the
19 officer's own statement and those concerns, because of the
03:52PM 20 officer's own statement, match up to the description provided in
21 the summary of the initial, or better yet your Grand Jury
22 testimony, occurring, a baton strike occurring at 18:26:14, that
23 would not be exculpatory evidence, would it?

24 MR. ORESKOVICH: Objection to the nature of the
25 question as being compound, mischaracterization.

1 BY MR. DURKIN:

2 Q. Answer the question then.

3 A. You know, it is compound. Could you please break it up for
4 me.

5 Q. Sure. Okay.

6 18:26:14. You said there's movement consistent with a
7 baton strike.

8 A. I agree with that.

9 Q. Okay. And if the officer came in and said, hey, at
03:53PM 10 18:26:14 approximately I delivered my first baton strike. That
11 would be consistent, wouldn't it?

12 A. Yes, sir.

13 Q. That would not be exculpatory, would it?

14 A. Correct.

15 Q. Okay.

16 18:26:16. Officer says, I delivered a second baton
17 strike before Mr. Zehm went to the floor.

18 A. Um-hum.

19 Q. And the forward motion, baton in hand, would be consistent
03:53PM 20 with the officer's description that he delivered a second baton
21 strike to Mr. Zehm, correct?

22 MR. ORESKOVICH: Same -- wait, just a moment.
23 Objection to the hypothetical.

24 THE WITNESS: It's not my evidence that that's a
25 forward motion baton strike. My evidence is that that's a

1 baton.

2 BY MR. DURKIN:

3 Q. That's a baton and the officer's moving forward.

4 A. Correct.

5 Q. Okay.

6 And if the officer said, Yup, I used my baton, I
7 delivered a second baton strike, that would be consistent with a
8 baton strike.

9 MR. ORESKOVICH: Same objection.

03:53PM 10 THE WITNESS: Yes.

11 BY MR. DURKIN:

12 Q. And it would not be exculpatory, would it?

13 A. I don't believe so.

14 Q. Okay. All right.

15 Going back to the 302, if we can quickly get through
16 that. Anything else on page three?

17 A. (Witness reviewed document.)

18 Q. And I'm talking about material inaccuracies here.

19 A. Well I just -- the end of paragraph three, you know, I
03:55PM 20 would not accept. Um, the material inaccuracies, let me
21 continue here.

22 Q. Okay.

23 A. (Witness reviewed document.)

24 Q. You dispute that you agreed back in March of 2007 that
25 those images showed a forward striking motion.

1 A. Yes. Yes. I disagree with that.

2 Q. You disagree that it shows that or you're disagreeing with
3 the description?

4 A. I'm disagreeing with it saying that it now shows that it's
5 a forward motion. Consistent -- I would agree the images are
6 consistent with baton motion.

7 Q. Okay. Forward baton motion.

8 A. But -- no. Baton in motion. We only have a single image,
9 I don't know if it's going backwards or forwards and that was my
03:55PM 10 point.

11 Q. Okay.

12 A. The fact that the officer is moving in one direction isn't
13 the same thing.

14 Q. Okay.

15 A. And the rest is fine.

16 Q. And the rest is fine?

17 A. Yes, sir.

18 Q. Okay. All right. All right.

19 In your statement that you've adopted now under oath,
03:56PM 20 you indicate, on pages one and two, with the description of the
21 SPD radio dispatch in terms of occurring either before
22 Thompson's first baton motion or between Thompson's first and
23 second baton motion. Is that right?

24 A. I didn't hear all of the question.

25 Q. Okay. Let me back up. I think we can cut to the chase on

1 this one.

2 A. Thank you.

3 Q. You prepared a composite exhibit which provided the actual
4 time of the dispatch radio's broadcast, correct?

5 A. Yes, sir.

6 Q. And you had previously testified it started approximately
7 18:26:12 and finished approximately 18:26:16, correct?

8 A. Yes.

9 Q. Okay. And the description of the summary is that the
03:57PM 10 second baton strike occurred after that broadcast began,
11 correct?

12 A. That's what the, what it says, yes.

13 Q. Okay.

14 A. Yeah.

15 Q. All right. And that's accurate, isn't it. The second
16 baton strike occurred after that broadcast began.

17 A. That's not my evidence. I don't see a second baton strike.
18 That's my point.

19 Q. Okay.

03:57PM 20 So from what you're saying is that the 18:26:16, even
21 though it's a baton raised, is not consistent -- well let me
22 back up.

23 You're saying it's consistent with a baton strike,
24 you're just saying that the video doesn't show it actually as a
25 baton strike.

1 A. The part 16 says, a second strike, a second time with
2 another overhand, up and down baton strike. That's not my
3 evidence. My evidence is that that baton is simply in the air.

4 Q. Okay.

5 A. So --

6 Q. Well let's take you to your Grand Jury testimony. Okay.
7 Do you have that in front of you?

8 A. Yes.

9 Q. Okay. Let's go to page 26, lines 17 through 20. Starting
03:58PM 10 with the question --

11 A. I'm sorry, page?

12 Q. Page 26.

13 A. Yes.

14 Q. Lines 17 through 20. Starting with the question, "When the
15 operator, Miss Jensen" and you know who that is, right? The
16 dispatcher?

17 A. I understand that, yes.

18 Q. "Indicated that the subjects were not uncertain as to the
19 taking of the money, that occurred on the time stamp, the
03:59PM 20 completion of that communication was approximately when?"

21 And you testified here today that it was 18:24 -- or
22 26, because we're doing the two minute, two, three second thing.

23 A. Yes. And I'm using the time from dispatch, not the time
24 that we've been referring to, yes.

25 Q. Okay.

1 But the time we've been referring to is 18:26:16,
2 which she started talking at 12 and finished approximately at
3 16.

4 A. Yes.

5 Q. Okay.

6 A. And -- yes.

7 Q. All right.

8 And then you also testified as to when it concluded,
9 which you've already done today, correct?

03:59PM 10 A. Yes, sir.

11 Q. Okay.

12 All right. And then I asked you further on, Grand
13 Jury, page 27, lines six through eight. "And just so we're
14 clear, you testified that the above dispatch concluded
15 approximately 18:26:17, but or 16, correct?"

16 A. 16, yes.

17 Q. Okay.

18 A. 16.

19 Q. Okay. And then going now to page 30, lines two through
04:00PM 20 three, you give the starting time, correct?

21 A. Yes.

22 Q. 18:26:12. All right.

23 Continuing on there, I'm looking now to page 30,
24 bottom portion of, I believe the section where it starts, where
25 the question is, we talk about, okay, and then the answer is, if

1 you would, please --

2 MR. ORESKOVICH: Is there a page, please?

3 MR. DURKIN: Yeah, page 30.

4 MR. ORESKOVICH: And line, please.

5 MR. DURKIN: 4 through 22. Let me grab it.

6 MR. ORESKOVICH: Thank you.

7 BY MR. DURKIN:

8 Q. Do you see that, starting at line 12?

9 A. Yes.

04:01PM 10 Q. Okay. Can you read that for me?

11 A. I'm sorry, line 24?

12 Q. Page 30, line 12, beginning with the sentence -- well let's
13 go ahead and start with line nine. Your answer.

14 A. "And I'm moving forward again and the officer is moving
15 toward Mr. Zehm. Mr. Zehm is now backing up into another aisle.
16 And the officer is moving forward. Let's back up for a second.
17 As he moves forward we can't see his arm at this point. We can
18 see his height. Go to the next image and the officer is in a
19 downward motion, so he has changed height from one position to
04:02PM 20 another position. And if we just look to the front of his head
21 there is a dark line. I'll back it up there for a moment. The
22 line goes away. When we, um, come in here there is a dark
23 object that is -- something there is causing a line to occur, so
24 there's -- it's consistent with a baton. We don't have enough
25 resolution to see it, but it's inside the building and it was

1 consistent with a baton, um, on that side."

2 Q. And that's at approximately 18:26:14, correct?

3 MR. ORESKOVICH: I would object to that comment. The
4 record speaks for itself as to the timing.

5 BY MR. DURKIN:

6 Q. Well it says 18:26:13, when he was moving forward.

7 A. No. It's, I'm referring to 18:26:15. The image at, of
8 slide 123 on exhibit 7 is what I'm referring to. I'm describing
9 in my report I'm going backwards and forwards and I've described
04:03PM 10 this, this is after the officer has done the downward position.

11 Q. Okay.

12 Let's continue on at page 31 then. And I would ask
13 you there, when you're talking about how the officer's now lower
14 in the image, correct, which would be consistent with the images
15 beginning at 18:26:13 and 14, correct?

16 MR. ORESKOVICH: Just a moment. Just so I can catch
17 up with you, I'm asking where, please, line?

18 MR. DURKIN: I'm starting at the top of page 31.

19 THE WITNESS: Yes, and I'm going backwards in the
04:03PM 20 image, back and forwards, during the Grand Jury. And I'm
21 referring to the image --

22 BY MR. DURKIN:

23 Q. Right.

24 A. -- at 18:26:14, which is depicted at slide 122.

25 Q. Okay.

1 And then you were questioned. "Mr. Fredericks, as a
2 trained officer and having experience in law enforcement have
3 you had the occasion to receive instruction on the use of a
4 baton?" And your answer?

5 A. "Yes."

6 Q. "And have you had occasion to use your baton during law
7 enforcement career?" Answer?

8 A. "Yes."

9 Q. "And is the movement that we're seeing here, as you
04:04PM 10 described, as you have described, is that consistent with the
11 movement of a forward overhand baton strike?"

12 A. "It is."

13 Q. Okay.

14 And that is inconsistent with the declaration you
15 provided to the Court, isn't it?

16 A. No, this is the whole point of why we are here. Is because
17 you and I had agreed that the term was going to be consistent
18 with, with a baton, with a swinging motion, not a baton, a
19 swinging motion.

04:04PM 20 And you've again asserted the word "overhand strike"
21 and the other consistencies were not brought up.

22 So I believe that this led to a misrepresentation,
23 perhaps, but certainly in the part in the Rule 16 it's
24 misrepresented.

25 We had agreed it was consistent with a swinging

1 motion. And that's what I was agreeing to, to the Grand Jury.

2 Q. But you were under oath, right?

3 A. Absolutely, yes.

4 Q. Provided accurate testimony.

5 A. Yes.

6 Q. Okay. And you described it as forward motion baton strike,
7 correct?

8 A. As long as baton strike doesn't mean contact, yes.

9 Q. Okay.

04:05PM 10 A. That's what we had agreed. Did not agree to that being
11 interpreted into this document.

12 Q. Okay.

13 And you're aware that the Grand Jury testimony was
14 provided to the defense as well?

15 A. I have no knowledge of that.

16 Q. Okay. Would that further alleviate your concerns?

17 MR. ORESKOVICH: Objection to the relevancy of that.

18 MR. DURKIN: I think it goes -- go ahead.

19 THE WITNESS: No, it doesn't alleviate my concern.

04:06PM 20 BY MR. DURKIN:

21 Q. Okay.

22 Does the fact that Officer Thompson testified
23 consistent with the description provided, does that alleviate
24 your concern?

25 MR. ORESKOVICH: I'm going to object to that

1 hypothetical and characterization.

2 THE WITNESS: I don't know.

3 BY MR. DURKIN:

4 Q. You don't know?

5 A. No.

6 Q. Okay.

7 A. I don't know what he testified to.

8 Q. Okay. Well, he gave a statement as well, correct?

9 A. Um --

04:06PM 10 Q. You're aware that he gave a statement describing his force
11 incident engagement with Mr. Zehm?

12 A. I'm aware that he provided a statement at some point. I
13 don't know what he was referring to, I don't know what he was
14 looking at at the time. I don't know if he was relying on the
15 Rule 16 document --

16 Q. Okay.

17 A. -- to say this is what your expert will say. I have no
18 idea what --

19 Q. I'm talking about Officer Thompson.

04:07PM 20 A. Yes.

21 Q. Okay.

22 Continuing on from that on page 31 of your Grand Jury
23 testimony. It says in the next sentence, continuing on. "And
24 Mr. Zehm backs away." Correct?

25 A. Yes.

1 Q. And then we talk about the line, the elevated line or
2 excuse me, the line at the 45-degree angle, correct?

3 A. Um, at some point we do, yes.

4 Q. Well, it's right there in that next paragraph, paragraph
5 21.

6 A. Yes.

7 Q. And that's the baton at 18:26:15, isn't it?

8 A. It is.

9 Q. Okay. And so the prior testimony, does that refresh your
04:08PM 10 recollection, was about 18:26:13, 18:26:14?

11 A. No, no, no, no. If you look at this, I say, "Let me go
12 back a moment, let me go forward a second, and I'm going to --"
13 and then I -- if you recall -- I hit a button and my system sort
14 of shut down a little bit and I had to get back to where I was.

15 So we're back to, um, the downward motion and then we
16 move forward from that downward motion back to 18:26:15.

17 There's only one image where the baton is on a 45-degree angle.

18 Q. You're right, there is. And the first time we talk about
19 it is on page 31. And we're talking about sequential

04:09PM 20 observations of the JPEGs, of the stills.

21 A. Not sequential, I'm going backwards and forwards. And I
22 even say to you to let me re-orient myself.

23 Q. And don't you say, line 15, "And Mr. Zehm backs away and
24 I'm just going to go forward a second."

25 A. Yes.

1 Q. "And I'm going to -- whoops, sorry. Now I'm going forward.
2 We can see the back of Mr. Zehm's head." Correct?

3 A. Yes. And then --

4 Q. And then, "I just want to orient myself." And I go,
5 "Sure."

6 And then the next question is, "Yeah." And your
7 answer to the next line, 21 through 25, actually through the
8 next page at line six, is that now we see the 45-degree angle.
9 And I'll go forward again. And there's an object in the front
04:09PM 10 of Mr. Zehm. This is his shoulder. And then you describe the
11 soda bottle.

12 A. I'm referring to the same. I'm referring to -- I've gone
13 back, we have -- I've hit a but button, we have gone way off
14 course, I'm going backwards and forwards, we finally go back
15 into it, and I'm, we're referring to 18:26:15. This is the only
16 image of the baton after 18:26:10 that I mention in any reports.

17 Q. Okay.

18 Then why are we talking about 18:26:12 right before
19 that and then you describe -- and let's go back to the page at
04:10PM 20 the top of page 30. Where we talk about 18:26:12, 18:26:13, and
21 then we get into the discussion about the movement consistent
22 with the baton.

23 A. Correct. Yes.

24 Q. And then we go, after that, we move on, and then we talk
25 about 18:26:15 where there's a 45-degree angle.

1 There's no discussion, would you agree with me, Mr.
2 Fredericks, there's no discussion about a 45-degree angle in the
3 dialog between your sworn testimony on page 30, starting at line
4 12 through 22.

5 A. You know, I'm sorry, I don't follow you. I think that, I
6 thought --

7 Q. I did, I spoke way too fast on that one. Let me rephrase
8 it.

9 A. I thought that we had agreed, and I certainly agree, that
04:11PM 10 the image where Mr., Officer Thompson is at the post, where he's
11 on the left-hand side of the post. And I'm at a, I'm at that
12 image right now, 18:26:14, slide 105.

13 It's at that moment to the next image where there is
14 that downward motion. I do not see a baton, I didn't talk about
15 a baton, I've never produced a baton image at that time. The
16 only baton is after that at 18:26:15.

17 And we, and I say in the transcript, let me go back,
18 let me go forward, let me go back. Then I take us back and then
19 I hit a wrong button, we get back to that point.

04:11PM 20 Q. I'm going to direct your attention to the middle of page
21 31. You've already gone back and forth.

22 A. Yes.

23 Q. And we talked about how you're a trained officer and have
24 been trained in the use of a baton.

25 And then we talk about, right after the description

1 you previously provided, saying it was consistent with a baton
2 strike where you saw this image, you say, once again, "Question:
3 Is this movement consistent with the movement of a forward
4 overhand baton strike?" And your answer is, "It is." And
5 that's at 18:26:14.

6 MR. ORESKOVICH: Well I would object to this as being,
7 one, asked and answered. Second, argumentative. And third, the
8 transcript speaks for itself.

9 BY MR. DURKIN:

04:12PM 10 Q. Mr. Fredericks, please answer the question.

11 A. Yes, and I agreed and we talked about it many times, I
12 absolutely agree that we agreed that I would say, yes, it is
13 consistent with a swinging motion. And if you mean baton strike
14 not to suggest contact, yes, I agree with it, it could be
15 consistent with that.

16 Q. Okay.

17 A. And I hold firm to that, so it's consistent.

18 Q. Okay.

19 And you would agree with me that that baton strike
04:13PM 20 occurs before dispatch concludes its broadcast, right?

21 A. Before -- that baton swinging motion occurs during the
22 broadcast, yes.

23 Q. Okay. All right.

24 So it was after the broadcast began, didn't it?
25 That's the first baton strike.

1 MR. ORESKOVICH: Objection.

2 BY MR. DURKIN:

3 Q. That first motion is consistent --

4 MR. ORESKOVICH: Argumentative.

5 BY MR. DURKIN:

6 Q. Go ahead. Answer, please.

7 A. The first motion we've been discussing is in my report
8 articulated in an exact image, that is occurring during the
9 broadcast.

04:13PM 10 Q. And the --

11 A. Not before the broadcast. Which is what this part 16
12 states.

13 Q. The broadcast starts at 18:26:12.

14 A. Correct.

15 Q. The motion consistent with the baton strike's 18:26:14.

16 A. Correct.

17 Q. Okay. And the broadcast is terminated at 18:26:16.

18 A. Correct.

19 Q. And approximately the same time we see the second baton
04:14PM 20 image in an elevated position above Officer Thompson's head as
21 he's moving in a forward direction.

22 A. Correct.

23 Q. Now you've done work for the Spokane Police Department
24 previously.

25 A. No.

1 Q. You have never done any prior training for them?

2 A. Um, in, I think I was a police officer, um, and I came down
3 to Spokane and did a forensic video presentation, wasn't paid.
4 That was many years ago.

5 Q. Okay.

6 A. And if, and two Spokane police people had come to a course
7 that I taught, I think in Quantico. And I don't recall doing
8 any of the work, doing any work for the Spokane Police
9 Department where they paid me, except for this case. Certainly
04:16PM 10 no forensic work.

11 Q. Okay. Well, yeah, I mean, you've done other, as you
12 described, other work.

13 A. No. No, no, I, I was invited to the training academy to do
14 a presentation many, many years ago.

15 Q. Okay.

16 A. Um, by Mike Lavelle. And it was a courtesy thing. I flew
17 in, flew out. I wasn't living in town, I was living in Canada.

18 Q. Okay.

19 A. And I've done hundreds of those around the country.

04:16PM 20 And then, as I said, two of their people came to a
21 course I taught in Quantico.

22 And if you present another case that I've done, I have
23 no recollection of it, but you can show me.

24 Q. All right.

25 I'm going hand you what's been marked as Exhibit

1 Number 6.1.

2 A. Um-hum.

3 Q. Recognize that?

4 A. Yes.

5 Q. E-mail from John McGregor.

6 A. Yes.

7 Q. To you, Grant Fredericks.

8 A. Yes.

9 Q. Dated July 19th?

04:17PM 10 A. Yes.

11 Q. Prior to meeting with Jack Driscoll on July 22nd, 2006?

12 A. Yes.

13 Q. I want you to read that or have you read that before in
14 preparation for your testimony here today?

15 A. No, I haven't read it before -- I'm familiar with this
16 e-mail and this is what I, um, described earlier.

17 Q. Okay.

18 A. (Witness reviewed document.)

19 Q. And it says that, "The City's going to take you up on your
04:17PM 20 offer you made to me last week about analyzing the Zip Trip
21 video."

22 A. Yeah.

23 Q. That's inconsistent with the way you described it earlier,
24 isn't it?

25 A. What I described earlier was that I got a call from the

1 media and I called John McGregor about it.

2 Q. And then you got a call from Jack Driscoll.

3 A. And I offered to assist John. And I got no response from
4 John.

5 Then Jack Driscoll contacted me and I believe that was
6 before this. So I believe that that's exactly what I described.

7 Q. Okay. Let me back up.

8 You said you're familiar with this e-mail. That means
9 you reviewed it recently?

04:18PM 10 A. No, no. I recall, um, I recall this e-mail.

11 Q. Okay. And the next one, please, 6.2. Are you familiar
12 with that e-mail?

13 A. Yes, I believe I gave you all these. I think this is in
14 the package that I provided to you. But, yes, I am familiar
15 with this.

16 Q. Okay.

17 A. And this is contained in all the documentation that is in
18 those, in the files, and I provided this to you I think on our
19 second or third meeting.

04:19PM 20 Q. Okay.

21 And then exhibit 6.3. Recognize those e-mails? Let
22 me get a date on the first one so we got a good reference in the
23 record, please.

24 6.2 is reflecting that Chief Odenthal is your contact
25 person for the retainer information, correct?

1 A. Eventually he was one of the contacts, yes.

2 Q. Okay.

3 A. I never met him and I don't, I think I might have had a
4 couple of contacts, e-mail contacts with him.

5 Q. Okay.

6 Mr. Fredericks, I think this will go quicker if you
7 just answer the questions that you can yes or no. We have got a
8 time constraint and I'm trying to make this all along --

9 A. I'm doing my best.

04:19PM 10 Q. -- and I know you want to give all kinds of background
11 information, but to the extent that you can answer yes or no it
12 might expedite things.

13 A. I'll do my best.

14 MR. ORESKOVICH: I would object to the narrative.

15 MR. DURKIN: And I'm going to move to strike the last
16 answer.

17 MR. ORESKOVICH: I object to the narrative by counsel.

18 BY MR. DURKIN:

19 Q. July 26, 2006, 6.3, you recognize that?

04:20PM 20 A. Yes.

21 Q. Okay. And then next one, 6.4, it's a July 25th, 2006
22 e-mail from Mr. McGregor to you, correct?

23 A. Yes.

24 Q. Okay.

25 And the next one, please, 6.5. It's an e-mail from

1 you to Terry Ferguson, July 25th, 2006, correct? Looks like it
2 incorporates some of the other e-mails.

3 A. And let me go back. You've asked me to adopt 6.4, which
4 contains e-mails that I haven't seen before that I wasn't copied
5 on, so I am really referring to just those that I wrote. Is
6 that fair?

7 Q. Well, do you recall getting the other e-mails?

8 A. No.

9 Q. You don't recall these e-mails being part of what you
04:21PM 10 received?

11 A. No.

12 Q. For instance, going to page two you're at the bottom of a
13 string of e-mails that CC'd you in on it.

14 A. Yeah, I don't recall that.

15 Q. And it appears that was forwarded to you by Mr. McGregor on
16 page one.

17 A. Certainly could have been, I just don't recall it.

18 Q. Okay.

19 A. Okay. And I, I don't know if it was a copy and paste or

04:21PM 20 whether I was included in that or not, it certainly wasn't --
21 I'm not included, um, in the link to it, but I might have seen
22 it.

23 Q. Okay.

24 Let's go to 6.5. Recognize that?

25 A. Yes.

1 Q. Okay.

2 And then 6.6. Take a moment to read that.

3 A. I don't think I ever saw this.

4 Q. Okay.

5 Is that consistent with your recollection of what
6 occurred in terms of the handling of your retainer and your
7 contact with Mr. Trepeddi?

8 A. No.

9 Q. It's not consistent?

04:23PM 10 A. Well I -- I have no, um, knowledge of what's contained in
11 there. I was bounced back and forth between at least three
12 different sources of payment and I don't know when that
13 occurred.

14 Q. Okay.

15 As I recall you provided the SPD with an estimate of
16 your fee of \$5,000; is that correct?

17 A. Yes. Based on my experience in dealing with this size of
18 case.

19 Q. All right.

04:23PM 20 And your actual fee was much more than that, wasn't
21 it?

22 A. To the City?

23 Q. Yes.

24 A. Um, after I met with you, which was an add on, it was about
25 5600. Much more than that? I don't --

1 Q. Okay.

2 A. \$600.

3 Q. Do you recall meeting with Special Agent Jangaard and I and
4 explaining that you had not been paid for an additional amount
5 that remained, that was in excess of the \$5,000 of services you
6 had provided?

7 A. Oh, um, do you have a, do you have a copy of the bills?
8 Which one are you talking to, talking about?

9 Q. I'm asking if you have a recollection of that conversation.

04:24PM 10 A. My recollection was it was the \$5,000 invoice, the initial
11 one.

12 Q. Okay.

13 The first time that we met do you have a recollection
14 of informing Agent Jangaard and myself that you actually
15 provided services in excess of the \$5,000 that you were paid?

16 A. Oh. That I didn't bill for. Because there was a little
17 bit more work, I had given them a quote, there was a bit more
18 work involved, I just didn't charge for it. I think -- is that
19 what you're referring to?

04:24PM 20 Q. That's part of what I'm referring to, yes.

21 A. Yeah, I made a quote, I put more time into it than I
22 expected, and I just didn't bill them for it.

23 Q. Okay.

24 Now as a forensic video analyst, would it be
25 appropriate for you at any time to be considering the liability

1 aspects of a matter while you were performing your purported
2 objective evaluation of the digital evidence?

3 A. I don't understand your question. My liability?

4 Q. No, I'm talking about the person whose -- let me back up.

5 Are there any ethical standards for forensic analysts?

6 A. Well, we have an ethics document, um, and, yes.

7 Q. Okay. Could you provide that to your counsel and provide
8 that to me, please.

9 A. Sure. You can download it from the LEVA web site, but I
04:25PM 10 can go look for it for you and download it.

11 Q. I actually tried to download it and couldn't get to it.

12 A. Okay. Well, I'll try to find it.

13 Q. Okay.

14 And does the ethical standards identify a requirement
15 that you remain scientifically objective?

16 A. Yes.

17 Q. Okay.

18 So it would be inappropriate at any time for a
19 forensic analyst to be discussing liability issues relative to a
04:26PM 20 project that they're working on during the course of a criminal
21 investigation. By liability, I'm talking about civil liability.

22 A. Oh, um, I don't think so necessarily, depending upon what
23 the conversation was.

24 Q. Okay.

25 A. And --

1 Q. Would you --

2 A. -- I don't believe that that ever occurred in this case,
3 but if somebody were to say to me, we're concerned about
4 exposure and liability, that wouldn't be my concern and it
5 wouldn't impact my work.

6 Q. Okay.

7 Do you recall whether or not you offered an opinion on
8 liability in this case?

9 A. No, that's not my area of expertise.

04:26PM 10 Q. Okay. Now, you've made Brady allegations, participated in
11 Brady allegations before, haven't you?

12 A. Not that I recall.

13 Q. Do you recall making an allegation that evidence was
14 submitted that was inaccurate as part of a motion for a new
15 trial? Video evidence?

16 A. You know, I -- I do, um, so many cases and sometimes I come
17 in after the fact, um, and I'm asked to look at issues. And
18 often the issues are going to be, was the evidence altered or
19 changed. I mean that really is a very common question. And
04:27PM 20 that might be Brady, it's never anything I ever deal with.

21 Q. You've never participated in, on seeking a new trial
22 relative to Brady allegations of tampered evidence?

23 A. Not where I've been involved. I mean, I might have been an
24 expert looking at video and making observations that the video
25 has been altered and changed.

1 I've testified in a case, um, it wasn't Brady, I think
2 it was pure fabrication of video by an analyst. If we're
3 referring to a case in Ohio or Iowa, I think it was Iowa. Is
4 that what we're referring to?

5 Q. Well, I'm asking if you recall.

6 You recall this one. Do you recall any others?

7 A. No.

8 Q. Okay.

9 A. You know, I don't know. I never alleged a Brady violation.

04:28PM 10 Q. Okay.

11 A. It's not been something I've been involved in, to my
12 knowledge.

13 Q. Okay. Have you participated in allegations of alleging
14 prosecutorial misconduct before?

15 A. I've not alleged prosecutorial misconduct.

16 Q. Have you participated in assisting counsel in making
17 allegations of prosecutorial misconduct?

18 A. Um, not to my knowledge that's been specific, no. I
19 haven't been party to that.

04:29PM 20 Q. You didn't submit a declaration in support of that?

21 A. Mr. Durkin, you'll have to be more specific.

22 Q. I'm asking if you recall, sir.

23 A. No, I don't recall.

24 Q. If you don't recall, just tell me you don't recall.

25 A. Don't recall.

1 Q. Do you recall using the term, "overhand strike,"
2 "consistent with overhand strike" in your grand jury testimony?

3 A. I don't recall.

4 Q. You don't recall?

5 A. No.

6 Q. You've had a chance to review your Grand Jury testimony
7 before you appeared here today.

8 A. Yes.

9 Q. Okay.

04:30PM 10 And would you, and if I stated to you that that term
11 was used, would you be contesting that?

12 A. No.

13 MR. ORESKOVICH: Objection. Asked and answered to the
14 extent of his recollection.

15 BY MR. DURKIN:

16 Q. Go ahead.

17 A. I don't recall using it.

18 Q. Okay.

19 Okay. Going back now to actually, I think -- I think
04:31PM 20 moving forward for us to 26:16:02, please. Okay. Where we see
21 the baton in the, above the head, perpendicular, excuse me,
22 parallel position to the floor, correct?

23 A. Yes, sir.

24 Q. With a forward movement of Officer Thompson, correct?

25 A. Correct.

1 Q. Okay.

2 And you're aware, are you not, Mr. Fredericks, that
3 Mr. Zehm goes to the ground at approximately 18:26:16, that's
4 more fully revealed in camera number four, I believe.

5 A. Um, I don't know the time, he goes to the ground shortly
6 after this.

7 Q. Okay.

8 And so if Officer Thompson provided a statement and
9 provided testimony that after the second baton strike Mr. Zehm
04:32PM 10 went to the ground, that would be consistent with the
11 description of the summary provided, correct?

12 MR. ORESKOVICH: I'm going to object to the
13 characterization of the officer's testimony. You may answer.

14 THE WITNESS: If the summary said Officer Thompson
15 said this, then it would be consistent. This says I said this,
16 so it's not consistent. It's not my evidence.

17 BY MR. DURKIN:

18 Q. Okay. It's not inconsistent with the video, correct?

19 A. Um, it is completely inconsistent because you are saying
04:33PM 20 this is what the video says. If this is what Officer Thompson
21 says it's different.

22 Now, if you're saying, if you're asking me if this
23 image here with a baton in a parallel position to the floor, um,
24 could be the preceding image to Officer Thompson's striking the
25 baton toward Mr. Zehm, yes, it could be.

1 Q. And Mr. Zehm subsequently going to the ground shortly
2 thereafter.

3 A. Mr. Zehm goes to the ground, yes.

4 Q. Okay.

5 Now, Mr. Fredericks, is it, isn't it true that when we
6 met with you back in March of 2007, and we went through your
7 first report, and we pointed out all these inaccuracies in your
8 report and particularly your summary, that you actually wanted
9 to make changes and correct those inaccuracies.

04:34PM 10 A. Um, no.

11 Q. It's not true?

12 A. No. That's --

13 Q. Okay.

14 A. That's -- firstly, you've made a compound statement saying,
15 all these inaccuracies. I don't agree. My summary is a summary
16 of some very detailed observations.

17 The detailed observations are detailed observations.

18 The summary is the summary of those observations.

19 Um, it was your direction, not at this meeting but the
04:34PM 20 subsequent meeting, to, after you hired me, to write a
21 subsequent report. I wrote no reports afterwards, except at
22 your direction after March.

23 Q. Okay.

24 And do you recall that it was my request that you
25 actually file an amended report. Do you recall that?

1 A. After you hired me you asked me to redact information from
2 the report.

3 Q. Okay.

4 A. By providing a different report. More narrowly focused and
5 removing the information.

6 Q. And it was your suggestion that the request be made that it
7 be described as a supplemental report, correct?

8 A. That would be consistent with the way I operate, yes.

9 Q. Okay.

04:35PM 10 You didn't want the perception that you would be
11 amending your report, you wanted to provide a supplemental
12 report.

13 A. I wanted to be quite clear what I was being directed to do.
14 So it was a supplemental report yes.

15 Q. Okay. Okay.

16 A. And in it, I, at the very beginning, I stated that I was
17 asked to remove human factors issues.

18 Q. Okay. Which you agree with.

19 A. I don't take issue with that.

04:36PM 20 Q. Okay.

21 And in terms of this Pepsi bottle exhibit that you
22 prepared, the demonstrative exhibit you're referring to, that
23 was actually showing the hands of Mr. Zehm, wasn't it?

24 A. It shows his hands on the bottle, yes.

25 Q. Okay. And that was Exhibit Number 8, that you provided?

1 A. I don't know the number.

2 Q. Okay. And in terms of removing -- again this is -- and
3 let's back up.

4 These exhibits that you prepared, these are all actual
5 stills, correct --

6 A. Yes.

7 Q. -- from the video?

8 A. All video is just simply a series of stills. So, yes,
9 everything I would have produced is just a bunch of stills.

04:37PM 10 Q. Okay.

11 And all of that had been produced to the defendant.

12 MR. ORESKOVICH: Objection as to what the source of
13 the foundation of his knowledge is.

14 BY MR. DURKIN:

15 Q. All right.

16 A. I don't know.

17 Q. All right. And the request for removal was to remove, not
18 the bottle, but the pointing of the arrows, correct?

19 A. Well it wasn't to remove any image.

04:37PM 20 Q. Right. It was just to remove --

21 A. It was to remove the reference to the bottle.

22 Q. The pointing arrow, correct?

23 A. No, it was to remove the reference to the bottle. So it
24 was to remove the annotations that direct the attention to that
25 being the bottle.

1 Q. Okay.

2 Well, wasn't the purpose of the exhibit to show
3 Mr. Zehm's hands on bottle?

4 A. Um, the exhibit that I produced?

5 Q. Yeah.

6 A. The exhibit that I produced was certainly to demonstrate or
7 to make it clear that that's where the bottle was.

8 Q. In Mr. Zehm's hands.

9 A. Correct. Yes.

04:38PM 10 Q. Okay. All right.

11 MR. DURKIN: Yeah, I think I'm almost done. Let me
12 take a look at my notes.

13 MR. ORESKOVICH: For the record, I just passed you a
14 note from the videographer. You've got five minutes left on the
15 tape.

16 MR. DURKIN: Okay. Why don't we change the tape, if
17 you don't mind. Thank you.

18 THE VIDEOGRAPHER: This will conclude tape number 4.
19 The time is 4:38 p.m.

04:38PM 20 (Break taken.)

21 THE VIDEOGRAPHER: This is the continued videotape
22 deposition of Grant Fredericks and tape number 5. The date is
23 March 2, 2012. The time is 4:50 p.m.

24 BY MR. DURKIN:

25 Q. Okay.

1 Mr. Fredericks, do you recall when we first met and we
2 took a look at the images contained on the Open Eye and then of
3 course on the laptop that you had, which was different from the
4 one you have now, isn't it?

5 A. Oh, possibly.

6 Q. Okay. You had a green green function, a deconvolution
7 button?

8 A. Um --

9 Q. Do you recall that?

04:51PM 10 A. No. Say it again.

11 Q. Okay. You described it as a green green button. It was a
12 deconvolution function.

13 A. Oh, um, no, same -- what I showed before was an Avid
14 interface.

15 Q. That's correct.

16 A. Yes. I have both. Avid interface and still images, which
17 are two different things. The Avid was --

18 Q. Okay.

19 A. -- to integrate the audio and all the video sources
04:52PM 20 together. And to play in realtime.

21 Q. At one point in our review you were able to press a button
22 that provided clarity in terms of viewing the image.

23 A. It was more clear, yes.

24 Q. Okay. What was that function?

25 A. Um, it was just a higher res function.

1 Q. Okay.

2 And when we met, we talked about -- and the statement
3 I recall you making was, "We all know what's happening in terms
4 of baton strikes, but you just can't see them all on the video."

5 MR. ORESKOVICH: I'm going to object to that question
6 as counsel testifying as a witness about an interview that --

7 MR. DURKIN: I'm asking --

8 MR. ORESKOVICH: Let me finish.

9 MR. DURKIN: Go ahead.

04:52PM 10 MR. ORESKOVICH: A meeting that he took place in and I
11 think it's inappropriate to be questioning and testifying at the
12 same time.

13 MR. DURKIN: It's asking a witness as to whether or
14 not --

15 MR. ORESKOVICH: I'm not arguing, I'm just making my
16 objection. Go ahead with your question.

17 BY MR. DURKIN:

18 Q. Go ahead and answer the question, please.

19 A. Yeah, and this is, I think, the fundamental problem. I
04:53PM 20 don't know if you understand me when I say, I can only speak to
21 what the video images show, I can't comment about what you
22 believe is happening between the images or out of view of the
23 camera. So I disagree --

24 MR. DURKIN: I'm going to move to strike.

25 THE WITNESS: -- I disagree with that.

1 BY MR. DURKIN:

2 Q. Mr. Fredericks, that wasn't my question. My question was
3 simple and direct, it was a yes or no question.

4 Do you recall making the statement, "We all know
5 what's going on, the question is whether or not you can see it
6 on the video."

7 A. No.

8 Q. Okay. Fair enough.

9 Now, you received a copy of --

04:53PM 10 A. I'm sorry. I said or you said that?

11 Q. You said that.

12 A. No. No.

13 Q. Okay.

14 You were aware of this summary back in September of
15 2009.

16 A. Correct.

17 Q. Okay. And you were so concerned about it and so offended
18 by it, that you never brought it to the FBI's attention in 2009,
19 correct?

04:54PM 20 A. Correct.

21 Q. You never brought it to my office's attention in 2009.

22 A. Correct.

23 Q. You never brought it to my attention in 2009.

24 A. That's correct.

25 Q. Same thing in 2010. You didn't, you were so offended by

1 it, so upset by it, so upset with the alleged inaccuracies that
2 you didn't do anything about it in 2010 in terms of going to the
3 FBI with your concerns. Right?

4 A. Well, your characterization that I was so upset by it I
5 don't think is accurate.

6 Q. Okay.

7 A. I didn't accept it, I was confused by it, it wasn't my
8 evidence, and I wasn't going to support it.

9 Q. Okay.

04:54PM 10 A. And I had done everything I could to try to dissuade you
11 from this and that didn't work, so I decided to leave it.

12 MR. DURKIN: I'm going to move to strike the response
13 as nonresponsive.

14 BY MR. DURKIN:

15 Q. My question is, sir, did you go to the FBI with your
16 concerns in 2010?

17 A. No.

18 Q. Did you go to the U.S. Attorney's Office in 2010 with your
19 concerns?

04:54PM 20 A. No.

21 Q. Did you come to me with your concerns in 2010?

22 A. No.

23 Q. In 2011 did you contact the FBI with your concerns?

24 A. No.

25 Q. U.S. Attorney's Office with your concerns?

1 A. No.

2 Q. Did you come to me with your concerns?

3 A. No.

4 Q. Okay.

5 And so you were so upset about this, that the only
6 time that you went to anybody about it, you waited until after
7 the jury returned with the verdict. Is that right?

8 A. I've never been so upset about this. I've been concerned.

9 Q. Okay.

04:55PM 10 A. And when I realized that it had not been corrected --

11 MR. DURKIN: I'm going to move to strike. You said
12 you were concerned. The rest of it is not responsive to my
13 question.

14 MR. ORESKOVICH: Well, wait a minute. We need to get
15 it on the record. You can't tell the witness not to answer. He
16 can answer, you can move to strike it, the judge can decide what
17 to do. But not letting him finish I don't think is appropriate.
18 Go ahead and finish your answer, sir.

19 THE WITNESS: When I realized that this was not going
04:55PM 20 to be corrected, that's when I decided to investigate whether I
21 should try to bring this to the Court's attention.

22 My expectation all along was that it was going to be
23 corrected. So I never got upset about it, I just anticipated it
24 would be corrected.

25 BY MR. DURKIN:

1 Q. Okay.

2 To follow-up on that. In terms of having it
3 corrected, disclosed in your first report to defense counsel?

4 A. No, that's not what I meant.

5 Q. Disclosed in your second report to defense counsel?

6 A. No, because they're, they don't deal with this.

7 Q. Disclosed in your Grand Jury testimony to defense counsel?

8 A. They don't deal with this. So that would not be what I
9 intended when I said it would be corrected.

04:56PM 10 Q. Okay.

11 MR. DURKIN: That's all the questions I have right
12 now.

13

14 FURTHER EXAMINATION

15

16 BY MR. ORESKOVICH:

17 Q. Have there been any times that you've been felt threatened
18 or intimidated by anyone concerning your involvement in this
19 case, Mr. Fredericks?

04:57PM 20 A. Yes.

21 Q. Tell me when.

22 A. About two weeks ago I was teaching my class at the FBI
23 National Academy, I was informed that the FBI office here in
24 Spokane had called and called the Unit Chief for the FBI
25 National Academy and made statements, I am told, that, um, I had

1 testified in this trial and that I had altered my testimony from
2 my Grand Jury testimony and that I'm now have made a complaint
3 that has caused, that may cause this whole thing to unravel.

4 Um, that information was given to my direct
5 supervisor, in Quantico, who was asked to investigate it. I
6 thought that that was inappropriate and, um, I felt some
7 intimidation.

8 Q. Approximately two weeks ago this occurred. Do you recall
9 that it was approximately in that very same time period that we
04:58PM 10 were attempting, through Mr. Wetzel, and through the
11 United States Attorney, to schedule this interview and
12 deposition?

13 A. Yes.

14 Q. You have referred to some demonstrative exhibits and we
15 talked about them kind of in a vacuum because we didn't mark
16 them before the Court.

17 And I want you to do this, if you would, to produce
18 them. All right. You produce the file. I would like those. I
19 may or may not have them, I don't know, I'm not representing one
04:59PM 20 way or the other.

21 A. Um-hum.

22 Q. But --

23 MR. DURKIN: Let's be specific about which ones,
24 please.

25 MR. ORESKOVICH: Well I don't know which ones.

1 BY MR. ORESKOVICH:

2 Q. Let me ask you about the demonstrative exhibits you
3 produced. That's the whole point of this. Is you produced a
4 number of demonstrative exhibits, as I understand it, for the
5 government.

6 A. Yes.

7 Q. Okay. And is there a way to identify them for the record
8 as we talked about them today?

9 A. Um, there are so many I don't think I could do it
04:59PM 10 thoroughly.

11 Q. Yeah. Okay.

12 A. There's some that I have in mind.

13 Q. Um-hum.

14 We were talking about a demonstrative exhibit earlier
15 that had, and I'm going to mess this up again, but I want to say
16 motions or baton motions one through 15?

17 A. Yes.

18 Q. One through 10?

19 A. 1 through 13.

04:59PM 20 Q. All right.

21 Is there a file or a way that that demonstrative
22 exhibit is identified that you can produce that for us?

23 A. Yes. I brought two copies --

24 Q. Yeah.

25 A. -- of my file.

1 Q. Yes.

2 A. Each one are identical.

3 Q. Yeah.

4 A. And that file is included and it's called, I believe it's
5 called Baton Motions. And it's a PDF file.

6 Q. All right.

7 You have talked about other demonstrative exhibits and
8 I want to separate that out, because I understand you made a
9 whole series of the stills of a certain portion of the Zip Trip
10 video.

05:00PM

11 A. Yes.

12 Q. Correct.

13 In my mind that might be a little bit different, those
14 are still images of a video. But I'm really focusing for a
15 moment on demonstrative exhibits and just trying to get to that
16 a little bit.

17 What other demonstrative exhibits did you prepare for
18 the government?

19 A. Um, I provided a file.

05:00PM

20 Q. Yeah.

21 MR. DURKIN: You know, I'm going to object to this in
22 terms of getting into work product. If we have a specific one
23 that we talked about today that goes to the issues that are
24 involved, let's talk about those. He's identified them, we
25 talked about them on the record, either before in the interview

1 or during the course of the deposition.

2 Let's identify those and we can talk about getting you
3 a copy of those separated out onto a separate disk or DVD and
4 getting those to you.

5 BY MR. ORESKOVICH:

6 Q. What I'm trying to do is to do that, but because I don't
7 know what's contained in that file. That's what I'm trying to
8 look at. Not having the ability to know how to exactly ask this
9 question.

05:01PM 10 You referred to this in the course of your interview
11 and your deposition and all I'm trying to do is have you
12 identify for the record what you were talking about.

13 A. One of the things I was talking about was I produced one
14 specifically that was labeled, Pepsi bottle.

15 Q. Yes.

16 A. That's contained in a file that's linked into a file with
17 probably almost a hundred other demonstrative exhibits --

18 Q. Yes.

19 A. -- that are searchable and linkable and they were intended
05:01PM 20 to assist in the Court to follow through the evidence.

21 Q. Yeah.

22 A. And some of them had annotations, I think, um, um, and
23 there were other files, but I don't recall, I can't recall
24 exactly, um, you know, what other files that I created.

25 There was this exhibit we talked about that, um,

1 Special Agent Jangaard agreed, just leave the reference to the
2 Pepsi bottle in there. And there were pointers. And I don't
3 remember what document that's in. It's in the file somewhere.

4 Q. All right.

5 MR. ORESKOVICH: That's all I have. Thank you, sir.

6 MR. DURKIN: Let me take a look at my notes real
7 quick.

8 (Pause.)

9 MR. DURKIN: That's all questions I have. Thank you.

05:02PM 10 MR. ORESKOVICH: Thank you, Mr. Fredericks.

11 THE VIDEOGRAPHER: Thank you, Mr. Fredericks. This
12 will conclude tape five of five in the videotape deposition.

13 The time is now 5:02 p.m.

14 (Whereupon Court was recessed at 5:07 p.m.)

15 (Signature is waived.)

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1 STATE OF WASHINGTON)

2 : ss: REPORTER'S CERTIFICATE

3 COUNTY OF SPOKANE)

4 I, Mark A. Snover, a notary public in and for the
5 State of Washington, do hereby certify:

6 That the foregoing deposition of
7 GRANT FREDERICKS was taken on the date and at the time and place
8 as shown on page 1 hereto;

9 That the witness was sworn upon his oath to tell the
10 truth, the whole truth and nothing but the truth and did
11 thereafter make answers as appear herein;

12 That the foregoing is a true and correct transcription
13 of my stenographic notes of the requested deposition transcribed
14 by me or under my direction;

15 That the witness' signature was waived.

16
17 WITNESS my hand and seal this _____
18 day of _____, 2012.

19
20 _____
21 MARK A. SNOVER, RPR/CSR
22 CSR No. SN-OV-EM-A396DM
23 Notary Public in and for the
24 State of Washington, residing at
25 Spokane.